Babasaheb Dr. B.R. Ambedkar

(14th April 1891 - 6th December 1956)

Courtesy : Artist Prof. Pramod Ramteke, Chitrakala Mahavidyalya, Nagpur

Significance of the Hindu Code

No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it (Hindu Code) in point of its significance. To leave inequality between class and class, between sex and sex which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code.

—Dr. Ambedkar on 'Hindu Code'

DR. BABASAHEB AMBEDKAR
WRITINGS AND SPEECHES

Vol. 14
PART ONE
(SECTIONS I TO III)

Edited

by

Vasant Moon

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Kumari Selja

Minister for Social Justice and Empowerment
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MESSAGE

Babasaheb Dr. B.R. Ambedkar, the Chief Architect of Indian Constitution was a scholar par excellence, a philosopher, a visionary, an emancipator and a true nationalist. He led a number of social movements to secure human rights to the oppressed and depressed sections of the society. He stands as a symbol of struggle for social justice.

The Government of Maharashtra has done a highly commendable work of publication of volumes of unpublished works of Dr. Ambedkar, which have brought out his ideology and philosophy before the Nation and the world.

In pursuance of the recommendations of the Centenary Celebrations Committee of Dr. Ambedkar, constituted under the chairmanship of the then Prime Minister of India, the Dr. Ambedkar Foundation (DAF) was set up for implementation of different schemes, projects and activities for furthering the ideology and message of Dr. Ambedkar among the masses in India as well as abroad.

The DAF took up the work of translation and publication of the Collected Works of Babasaheb Dr. B.R. Ambedkar published by the Government of Maharashtra in English and Marathi into Hindi and other regional languages. I am extremely thankful to the Government of Maharashtra's consent for bringing out the works of Dr. Ambedkar in English also by the Dr. Ambedkar Foundation.

Dr. Ambedkar's writings are as relevant today as were at the time when these were penned. He firmly believed that our political democracy must stand on the base of social democracy which means a way of life which recognizes liberty, equality and fraternity as the principles of life. He emphasized on measuring the progress of a community by the degree of progress which women have achieved. According to him if we want to maintain democracy not merely in form, but also in fact, we must hold fast to constitutional methods of achieving our social and economic objectives. He advocated that in our political, social and economic life, we must have the principle of one man, one vote, one value.

There is a great deal that we can learn from Dr. Ambedkar's ideology and philosophy which would be beneficial to our Nation building endeavor. I am glad that the DAF is taking steps to spread Dr. Ambedkar's ideology and philosophy to an even wider readership.

I would be grateful for any suggestions on publication of works of Babasaheb Dr. Ambedkar.

(Kumari Selja)

Collected Works of Babasaheb Dr. Ambedkar (CWBA)

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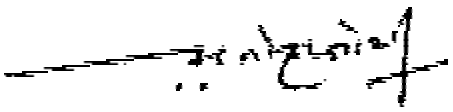
PREFACE

Maharashtra has been fortunate in having a long tradition of social reforms. Just as in Europe, Christianity inaugurated the Era of equality by preaching that a prince and a pauper are equal in the eyes of God, saints like Dnyaneshwar, Namdeo, Tukaram, Gora Kumbhar and Chokhamela brought about a great social change by preaching the Gospel of compassion, equality and liberty of worship. Caste barriers were annihilated. The rise of the Maratha power under Shivaji the Great demonstrated that a popular hero could be crowned as a King. Shivaji heralded the dawn of political equality. These saints of Maharashtra preached the Gospel of democracy in religion, breaking down the barriers of classes and castes. The Warkari cult did not recognise caste. Members of the Warkari cult in procession, marched together eating the same food in the spirit of the true brotherhood. They shared the common quest for God. The Bhakti movement of the Warkaris broadened and deepened the freedom of worship.

Article 25 of the Constitution permits such freedom. The reforms introduced by Dr. Ambedkar in Hindu Law have been accepted by and large. He laid the foundation of the common Civil Code for the Hindus and the principle is capable of extension to other sections of the Indian society. However, reforms in religious beliefs and practices are slow and voluntary. It is hoped that the guidance given by Dr. Ambedkar in this respect will be availed of by leaders of different communities and they will initiate a dialogue within the country so as to facilitate reforms in laws. Reforms, religious and social, had stirred the Maharashtrian society. The soil was fertile for further changes within the framework of the Hindu Law. Over the years, the Hindu Law underwent transformation, opening the channels of communication.

Dr. Ambedkar, by codifying the Hindu Law in respect of marriage, divorce and succession, rationalised and restored it to its glory. Dr. Ambedkar has preserved marriage as sacrament and promoted the growth of family values. Consistent with the Constitution, the Hindu Law as modified permits people to practice and profess their religion. But as Dr. Ambedkar categorically stated, "the state has retained all along the right to interfere in the personal law of any community in this country", and therefore, there is a sound basis for liberalisation of personal laws so as to broaden the freedom of the individual and the unity of the country based on such freedom.



(MANOHAR JOSHI)

Bombay :
November 28, 1995.

Chief Minister,
Maharashtra State.

EDITORIAL

Present volume contains speeches of Dr. Ambedkar in the codification of the Hindu Law. The Bill to amend and codify certain branches of the Hindu Law was referred to the Select Committee consisting of eminent jurists and parliamentarians viz. Sir Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri H. V. Kamat, Smt. G. Durgabai and many others. The list of the members of the Select Committee reads like the directory of eminent Indians.

Before the Hindu Succession Act, 1956 and the Hindu Marriage Act 1955 of which the Bill is a precurser, the Hindu Law was uncodified in a large measure, though certain branches of it were the subject of legislative intervention viz. Hindu Women's Right to Property Act, 1937. Scattered to innumerable decisions of the Indian High Courts and also of the Privy Council, it was a source of legislation and therefore, it was necessary to give a definite shape and form to the Hindu Law by consolidation and codification. The principles of codification covered (1) right to property, (2) order of succession to the property, (3) maintenance, marriage, divorce, adoption, minority and guardianship. The two schools of Hindu Law viz. Mitakshara and Dayabhag, created and sustained inequality. The Mitakshara school treated the property of the Hindu as belonging to a co-parcenary in which by reason of birth sons, grand-sons and great-grand sons had interest. The property passed by survivorship under Mitakshara whereas Dayabhag recognised the rule of personal interest and capacity to dispose of the property having interest in it. Further the Bill had the object of making the widow, the daughter and the widow of a pre-deceased son eligible to inherit property.

It is not fair to reproduce the reasons for introduction of the Bill nor it is necessary to refer to the provisions of the law relating to marriage and divorce as the reader will find them competently explained in the speeches of the distinguished members who along with Dr. Ambedkar contributed to the enfranchisement of women in the Indian sub-continent.

Dr. Ambedkar himself had explained lucidly the reasons for consolidation and codification. The chaotic condition of the Hindu Law was reduced to neat propositions in the form of judicial prenouncements and codification was the legislative recognition of the judge made law. 'Law must be stable and yet it must change to answer the felt needs of changing times', to paraphrase the words of Benjamin Nathan Cardoze in his 'Nature of judicial process'. The unanimous approval of the Constituent Assembly to the principles of the Bill is as much a tribute to the forensic skills of Dr. Ambedkar as to the training and temperament of those who were the members of the Constituent Assembly. The principles of the Bill are in harmony with the constitutional philosophy of equality of men and women.

Needless to add that the Bill was a part of social engineering via law. It was by the standard of the time a revolutionary measure. The debates in the Constituent Assembly provoked sharp reactions. However, by providing such sharp reactions, freedom of speech fulfilled its high purpose viz. to invite discussions and to raise disputes. Now that the dispute is over and women have become as assertive as men, if not more, younger generation may find delightful reading and may well imagine what blessings of freedom they enjoy under our noble Constitution.

Though the proposal for consolidation and codification of the Hindu Law passed through opposition, eventually it came to be approved and applauded.

This could be possible as there was sustained attempt to educate public opinion and to ameliorate the condition of

women. A list of the Acts modifying the Hindu Law relating to women would be instructive :—

(1) The Caste Disabilities Removal Act, 1850.

(2) The Hindu Widow Remarriage Act, 1856.

(3) The Indian Succession Act, 1925.

(4) The Native Convert's Marriage Dissolution Act, 1866.

(5) The Transfer of Property Act IV of 1882 as amended by Act XX of 1929.

(6) The Indian Majority Act, 1875.

(7) The Guardian and Wards Act, 1890.

(8) The Transfer of Property (Amendment) Supplementary Act XXI of 1929. This Act amends the Madras Act of 1914 and 1921 and the Hindu Disposition of Property Act, 1916 which related to transfers and bequests in favour of unborn person.

(9) The Hindu Gains of Learning Act, 1930. This Act makes all acquisitions by means of learning the separate property of the acquirer.

(10) The Hindu Women's Rights to Property Act XVIII of 1937.

So also it may be noted that the Indian Evidence Act, 1872, supersedes the rules of the Hindu Law of Evidence. The Indian Penal Code, 1859 supersedes the whole of the Hindu Criminal Law.

The passing of the measure by the Parliament was, therefore, the slow but sure effect of these legislative measures and was part of the social engineering which found its fulfilment in the Indian Constitution.

This volume comprises complete debate on the Hindu Code Bill introduced by Dr. B. R. Ambedkar in the Constituent Assembly on 11th April 1947. The Bill was moved for referring to the Select Committee on 9th April 1948. This was followed by debate which continued for more than 4 years and still remained inconclusive. In the words of Dr. Ambedkar, it was

killed and died unusept and unsung. This was probably the longest discussion on any single Bill in the free India's Parliament. Dr. Ambedkar felt that the Government and the party in power i.e. Congress were not eager to clear the Hindu Code. He, therefore, tendered his resignation on 27th September 1951 to the Prime Minister Pandit Jawaharlal Nehru but continued to participate in the Parliamentary debates till 10th October 1951 on the request of the Prime Minister. In his letter he expressed that he attached greatest importance to the Hindu Code Bill and would be prepared to undergo any strain on his health to get the Bill through. He wanted the Bill to be taken-up on top priority basis on 16th August and be finished by the 1st of September 1951. However, the opponents of the Hindu Code continued obstructive tactics and delayed the passing of the Bill. Dr. Ambedkar ultimately submitted his statement of resignation on 10th October and left the House in anguish.

The whole discussion on the Hindu Code right from its introduction in the Constituent Assembly till 10th October 1951 is divided into 4 sections in this Book. Section I consists of the introduction of the Bill for referring it to the Select Committee. Dr. Ambedkar's speech explaining the salient features and the speeches of Dr. Pattabhi Sitarammaya, Naziruddin Ahmad, Smt. Hansa Mehta, Shri Ram Sahay, Dr. B. V. Keskar, Begum Aizaz Rasul and Shri R. K. Chaudhary are also included. This part covers discussion between 17th November 1947 to 9th April 1948.

Second section of this volume is the draft Hindu Code as prepared by Dr. Ambedkar and the then existing Hindu Code as amended by the Select Committee. This is presented here with a view to have a glimpse of Dr. Ambedkar's original idea about the reform of the basic structure of the Hindu Law.

Third Section comprises general discussion on the Hindu Code. Some members questioned the authority of the Constituent Assembly to pass this radical legislation, some

objected to the reform of divorce and women's right to inherit property and some discarded the Bill totally as interference in the religious matters of the Hindu Society. However, progressive elements in the Assembly supported the move and praised Dr. Ambedkar for his courageous measure.

The fourth section covers the clausewise discussion on the Hindu Code Bill.

Although the volume is part of Dr. Ambedkar's writings, his attempt for reforming the Hindu Society through the introduction of Hindu Code is the most important event of his life. Discussion on the Hindu Code and Dr. Ambedkar's role played through the debates thereon are very useful for the students of Socio-religious study of the Hindu Society. The members of the Committee therefore felt that the whole discussion should be brought out in this volume rather than mere speeches of Dr. Ambedkar alone.

It is hoped that this compilation will be useful to the scholars, laymen and the historians alike to appreciate the freedom now available to different sections of the Hindu society.

This note will be incomplete without placing on record my grateful thanks to:

* Principal Manohar Joshi, the Chief Minister of Maharashtra and Shri Dattatraya Rane, Minister for Higher Education, Maharashtra State, who have shown keen interest in the thought of Dr. Babasaheb Ambedkar and encouraged this project; and

* Shri Navjeevan Lakhanpal, Secretary, Higher and Technical Education, Government of Maharashtra, whose guidance and encouragement has been always of a great help ;

The work of Editing of this volume has been made possible by the ready help, support and co-operation I have received :

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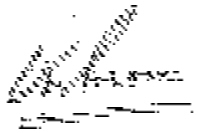

Bombay: (VASANT MOON)

November 28, 1995. Officer on Special Duty.

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SECTION I

HINDU CODE BILL REFERRED TO SELECT COMMITTEE

17th NOVEMBER 1947

TO

9th APRIL 1948

*HINDU CODE

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I move:

"That the Bill to amend and codify certain branches of the Hindu Law be continued."

Mr. Speaker : Motion moved :

"That the Bill to amend and codify certain branches of the Hindu Law be continued."

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I know the present stage of this very important Bill ? I understand there has been a considerable amount of agitation among our Hindu friends over it and it is better we have a picture of the stage at which the Bill is at present.

The Honourable Dr. B. R. Ambedkar : It was only introduced. No further stage was taken.

Shri R. V. Dhulekar (U. P.: General): In the new set up we should have no Hindu Law and Muslim Law. We should have a general Law and therefore....

Mr. Speaker : Honourable Member is speaking on the merits. He will have an opportunity of saying it when the Bill comes before the House. At present the only question is whether the Bill should be continued or not continued.

Shri R. V. Dhulekar : So, Sir, I oppose, it should not be continued.

Mr. Speaker: The question is :

"That the Bill to amend and codify certain branches of the Hindu Law be continued."

The motion was adopted.

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*HINDU INTERCASTE MARRIAGE REGULATING AND VALIDATING BILL

Shri Mohan Lal Saksena : (U. P. : General): Sir, since the Law Minister has informed me that he proposes to make a motion for reference of the Hindu Code to a Select Committee during the present session, I do not want to move this motion.

Mr. Speaker : Do I understand that the Honourable Member does not want to make a motion now, but he wishes to keep it alive?

Shri Mohan Lal Saksena : Yes, Sir, In case the Law Minister does not bring in his motion, I may have to move mine.

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* Constituent Assembly of India (Legislative) Debates [Hereinafter called C.A. (Leg.) D.J, Vol. I, 17th November 1947, p. 41.

* C.A. (Leg.) D., Vol. I, 11th February 1948, p. 599.

*HINDU MARRIAGES VALIDITY BILL

Pandit Thakur Das Bhargava (East Punjab : General); Sir, I beg to move for leave to introduce a Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid.

Mr. Speaker : The question is:

> "That leave be granted to introduce a Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid."

The motion was adopted.

Pandit Thakur Das Bhargava : Sir, I introduce the Bill.

*HINDU CODE

*** The Honourable Dr. B. R. Ambedkar** (Minister for Law) : I beg to move:

> "That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M. Anantthasayanam Ayyangar, Shrimati G. Durgabai, Shri L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya Shri Mihir Lal Chattopadhvay, Dr. P. S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khursheed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover, with instructions to report not later than the last day of the first week of the next session of the Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, it is a matter of great pity and also of great regret both for myself and I believe also for the members of the House that so important a measure as the codification of Hindu Law should have come for discussion before the House almost at the fag end of the session. We have, according to the arrangement announced by the Honourable speaker this morning, to conclude the debate on this motion by 7 O'clock from now, with an interval of half an hour. I think it my duty that within the limitations in which we are placed I should give more time to Members of the Legislature to express their views on the various points raised by this Bill and I should like to contribute my own mite to the fulfilment of this wish which I have expressed. The only way by which I could do it is to set an example by myself to make my opening speech as brief as

4 P.M.

*C.A. (Leg.) D., Vol. II, 26th February 1948, p. 1288.

*C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3628-33.

I can possibly make. I regret it very much to have been required to come to that decision because this Bill is of such a vast character that if one were to expound it fully and thoroughly, and to explain its provisions as against the background of the existing Hindu Law, I have not the slightest doubt that such an effort would take not less than four or five hours. But that is impossible, and the House therefore, will forgive me if I confine myself to placing before it the most salient points which mark a departure from the existing law as we know it today.

Sir, this Bill, the aim of which is to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and of the Privy Council, which form a bewildering motley to the common man and give rise to constant litigation, seeks to codify the law relating to seven different matters. Firstly, it seeks to codify the law relating to the rights of property of a deceased Hindu who has died intestate without making a will, both female and male. Secondly, it prescribes a somewhat altered form of the order of succession among the different heirs to the property of a deceased dying intestate. The next topic it deals with is the law of maintenance, marriage, divorce, adoption, minority and guardianship. The House will see what is the ambit and the periphery of this Bill. To begin with the question of inheritance. Under this head the Bill enacts a new principle, at least for certain parts of British India. As many members who are lawyers in this House will know, so far as inheritance is concerned, the Hindus are governed by two different systems of law. One system is known as *Mitakashara* and the other is known as *Dayabhag.* The two systems have a fundamental difference. According to *Mitakshara,* the property of a Hindu is not his individual property. It is property which belongs to what is called a coparcenary, which consists of father, son, grandson and great grandson. All these people have a birth-right in that property and the property on the death of anyone member of this coparcenary passes by what is called survivorship to the members who remain behind, and does not pass to the heirs of the deceased. The Hindu Code contained in this Bill adopts the *Dayabhag* rule, under which the property is held by the heir as his personal property with an absolute right to dispose it of either by gift or by will or any other manner that he chooses.

That is one fundamental change which this Bill seeks to make. In other words, it universalises the law of inheritance by extending the *Dayabhag* rule to the territory in which the rule of the *Mitakshara* now operates.

Coming to the question of the order of succession among the heirs, there is also fundamental difference of a general character between the rule of the *Mitakshara* and the rule of the *Dayabhag.* Under the *Mitakshara* rule the agnates of a deceased are preferred to his cognates; under the *Dayabhag* rule the basis of heirship is blood relationship to the deceased and not the relationship based on cognatic or agnatic relationship. That is one change that the Bill makes; in other words, here also it adopts the rule of the *Dayabhag* in preference to the rule of the *Mitakshara.*

In addition to this general change in the order of succession to a deceased Hindu, the Bill also seeks to make four changes. One change is that the widow, the daughter, the widow of a pre-deceased son, all are given the same rank as the son in the matter of inheritance. In addition to that, the daughter also is given a share in her father's property; her share is prescribed as half of that of the son. Here again, I should like to point out that the only new change which this Bill seeks to make, so far as the female heirs are concerned is confined to daughter; the other female heirs have already been recognised by the Hindu Women's Right to Property Act of 1937. Therefore, so far as that part of the Bill is concerned, there is really no change in the Bill at all; the Bill merely carries the provisions contained in the Act to which I have made reference.

The second change which the Bill makes so far as the female heirs are concerned is that the number of female heirs recognised now is much larger than under either the *Mitakshara* or the *Dayabhag.*

The third change made by the (Bill is this that under the old law, whether the *Mitakshara* or the *Dayabhag,* a discrimination was made among female heirs, as to whether a particular female was rich or poor in circumstances at the death of the testator, whether she was married or unmarried, or whether she was with issue or without issue. All these consideration which led to discrimination in the female heirs are now abolished by this Bill. A woman who has a right to inherit

gets it by reason of the fact that she is declared to be an heir irrespective of any other considerations.

The last change that is made relates to the rule of inheritance in the *Dayabhag.* Under the *Dayabhag* the father succeeds before in preference to the mother; under the present Bill the position is altered so that the mother comes before the father.

So much for the order of succession of heirs to a deceased male Hindu. I now come to the provisions in the Bill which relates to intestate succession to females. As Members of the House who are familiar with Hindu Law will know, under the existing law the property held by a Hindu female falls into two categories; one is called her *stridhan,* and the other is called "woman's property". Taking first the question of *stridhan,* under the existing law *stridhan* falls into several categories; it is not one single category, and the order of succession to the *stridhan* of a female under the existing law varies according to the category of the *stridhan;* one category of *stridhan* has a different law of succession than another category and these rules are alike both as to *Mitakshara* as they are to the *Dayabhag.* So far as *stridhan* is concerned the present Bill makes two changes. The one change it makes is that it consolidates the different categories of *stridhan* into one single category of property and lays down a uniform rule of succession; there is no variety of heirs to the *stridhan* in accordance with the different categories of the *stridhan*—all *stridhan* is one and there is one rule of succession.

The second change which the Bill seeks to make with regard to the heirs is that the son also is now given a right to inherit the *stridhan* and he is given half the share which the daughter takes. Members will realise that in formulating this Bill and making changes in rules of succession, it is provided that while the daughter is getting half the share in the father's property, the son is also getting half the share in the mother's property so that in a certain sense the Bill seeks to maintain an equality of position between the son and the daughter.

Coming to the question of the "woman's estate", as members of the House will know under the Hindu Law where a woman inherits properly she gets only what is called a 'life estate' She can enjoy the income of the property, but she cannot deal with the corpus of the property except for legal necessity; the property must pass after

the death of the woman to the reversioners of her husband. The Bill, here again, introduces two changes. It converts this limited estate into an absolute estate just as the male when he inherits gets an absolute estate in the property that he inherits and secondly, it abolishes the right of the reversioners to claim the property after the widow.

An important provision which is ancillary to the rights of women to inherit property contained in this Bill is a provision which relates to *Dowry*. All members of the House know what a scandalous affair this *dowry* is; how, for instance, girls who bring enormous lot of property from their parents either by way of *dowry or stridhan* or gift are treated, nonetheless, with utter contempt, tyranny and oppression. The Bill provides in my judgment one of the most salutary provisions, namely, that this properly which is given as *dowry* to a girl on the occasion of her marriage shall be treated as a trust property, the use of which will inure to the woman and she is entitled to claim that property when she comes to the age of 18, so that neither her husband nor the relations of her husband will have any interest in that property; nor will they have any opportunity to waste that property and make her helpless for the rest of her life.

Coming to the provisions relating to maintenance, there is mostly nothing new in this part of the Bill. The Bill prescribes that the dependents of a deceased shall be entitled to claim maintenance from those who inherit his property either under the rules of intestate succession or who inherit the property under his will. There are 11 different kinds of dependants, enumerated in this Bill. I believe, at least speaking for myself, it is an unfortunate thing that even a concubine is included in the category of dependants, but there it is; it is a matter for consideration. The liability to maintenance is cast upon those who take the estate of the deceased. As I said, there is nothing very new in this part of the Bill.

There is another part of the Bill which is important and it relates to the rights of a wife to claim separate maintenance when she lives separate from her husband. Generally, under the provisions of the Hindu law, a wife is not entitled to claim maintenance from her husband if she does not live with him in his house. The Bill, however, recognises that there are undoubtedly circumstances where if the wife has lived away from the husband, it must be for causes beyond her control and

it would be wrong not to recognise the causes and not to give her separate maintenance. Consequently the Bill provides that a wife shall be entitled to claim separate maintenance from her husband if he is (1) suffering from a loathsome disease, (2) if he keeps a concubine, (3) if he is guilty of cruelty, (4) if he has abandoned her for two years, (5) if he has converted to another religion and (6) any other cause justifying her living separately.

The next topic to which I wish to make a reference concerns the question of marriage. The Code recognises two forms of marriages. One is called "sacramental" marriage and the other is called "civil" marriage. As members will know, this is a departure from the existing law. The existing Hindu law recognises only what is called "sacramental" marriage, but it does not recognise what we call a "civil" marriage. When one considers the conditions for a valid sacramental marriage and a valid registered marriage, under the Code there is really very little difference between the two. There are five conditions for a sacramental marriage. Firstly, the bridegroom must be 18 years old, and the bride must be 14 years old. Secondly, neither party must have a spouse living at the time of marriage. Thirdly, parties must not be within prohibited degree of relationship. Fourthly, parties must not be *sapindas* of each other. Fifthly, neither must be an idiot or a lunatic. Except for the fact that similarity of *sapindaship* is not a bar to a registered marriage, so far as other conditions are concerned, there is no difference between the sacramental marriage and the civil marriage. The only other difference is that the registered marriage must be registered in accordance with the provisions in the Bill while a sacramental marriage may be registered if parties desire to do so. Comparing the rules of marriage contained in the Bill and the existing law, it may be noticed that there are three differences which the Bill makes. One is this, that while the existing law requires identity of caste and sub-caste for a valid sacramental marriage, the Bill dispenses with this condition. Marriage under the Bill will be valid irrespective of the caste or sub-caste of the parties entering into the marriage.

Pandit Thakur Das Bhargava (East Punjab : General) If the marriage is between persons belonging to different castes, will it be valid?

The Honourable Dr. B. R. Ambedkar : Let me proceed with my speech. If the Honourable Member puts the question while making his speech, I shall reply to it.

The second provision in this Bill is that identity of *gotrapravara* is not a bar to a marriage while it is under the existing law. The third distinctive feature is this, that under the old law, polygamy was permissible. Under the new law it is monogomy which is prescribed. The sacramental marriage was a marriage which was indissoluble. There could be no divorce. The present Bill makes a new departure by introducing into the law provisions for the dissolution of marriage. Any party which marries under the new code has three remedies to get out of the contract of marriage. One is to have the marriage declared null and void; secondly, to have the marriage declared invalid; and thirdly, to have it dissolved. Now, the grounds for invalidation of marriage are two: One, if one party to the marriage had a spouse living at the time of marriage, then such a marriage will be null and void. Secondly, if the relationship of the parties fell within what is called the ambit of prohibited-degrees, the marriage could be declared null and void. The grounds for invalidation of the marriage are four. First, impotency. Second, parties being *sapinda*. Third, parties being either idiotic or lunatic. Fourth, guardian's consent obtained by force or fraud. In order not to keep the sword of dissolution hanging on the head, the Bill, in my judgment very wisely, has provided a limit to an action for invalidation. It provides that a suit for the invalidation of marriage must be filed within three years from the date of the marriage; otherwise the suit will be barred and the marriage will continue as though there was no ground for invalidity. The Bill also provides that even though the marriage may be invalidated and may be declared invalid by a court of Law, the invalidation of marriage will not affect the legitimacy of the children born and they would continue to be legitimate just the same.

Then coming to the question of divorce, there are seven grounds on which divorce could be obtained. (1) desertion, (2) conversion to another religion, (3) keeping a concubine or becoming a concubine, (4) incurably unsound mind, (5) virulent and incurable form of leprosy, (6) venereal diseases in communicable form and (7) cruelty.

Coming to the question of adoption, there again, most of the rules embodied in the Bill are in no way different from the rules obtaining under the present law. There are two new provisions in this part dealing with adoption. Firstly, under the Code, it will be necessary

for the husband if he wants to make an adoption to obtain the consent of his wife and if there are more than one, at least the consent of one of them. Secondly, it also lays down that if the widow wants to adopt, she can only adopt if there are positive instructions left by the husband authorising her to adopt and in order to prevent litigation as to whether the husband has, as a matter of fact, left instructions to his wife, the code provides that the evidence of such instructions shall be either by registered deed or by a provision in the will. No oral evidence would be admissible, so that chances of litigation are considerably mitigated. The Code also provides that the adoption may also be evidenced by registration. One of the most fruitful sources of litigation in this country is the question of adoption. All sorts of oral evidence is manufactured, concocted; witnesses are suborned; widows are fooled; they one day declare that they have made one adoption and subsequently they make an avowal that they have not adopted and in order that all this litigation may be put a stop to, the Code makes a salutary provision that there may be registration of adoption by a Hindu.

Then there is the question of minority and guardianship, the last subject which the Bill seeks to codify. There is nothing new in this part of the Code and, therefore, I do not propose to say anything so far as that part in the Bill is concerned.

As members will realize, the points which arise out of this Bill for consideration and which are new are these: First, the abolition of birth-right and to take property by survivorship. The second point that arises for consideration is the giving of half-share to the daughter. Thirdly, the conversion of the women's limited estate into an absolute estate. Fourthly, the abolition of caste in the matter of marriage and adoption. Fifthly, the principle of monogamy and sixthly the principle of divorce. I have sought to enumerate these points separately and categorically because I felt that in view of the limited time we have at our disposal, it would be of help to the Members of this House if I could point out what are the points of debate on which attention may be concentrated. These departures which are made in this Bill undoubtedly requires justification, but I think it would be a waste of time if at this stage undertook any defence of the departures enacted by this Bill. I propose to hear Honourable Members as to what they have to say on the points which I have enumerated and if I find that

it is necessary for me to enter upon a justification, I propose to do so in the course of my reply. Sir, I move.

Mr. Chairman : Motion moved :

> "That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M. Anantthasayanam Ayyangar, Shrimati G. Durgabai, Shri L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya, Shri Mihir Lal Chattopadhyay, Dr. P. S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khurshed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover, with instructions to report not later than the last day of the first week of the next session of the Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

*** Dr. B. Pattabhi Sitaramayya** (Madras : General): Mr. Chairman, Sir, I rise at an early moment in order to catch your eye in the hope that I shall have the ear of the House while having the eye of the Chairman. This is a very interesting piece of legislation which has been presented to this House, a piece of legislation for which the country has been whiting for long. This country having passed under the rule of foreigners for nearly a thousand years has not been able to effect that social progress which is incidental to changes in society in the world and which takes place imperceptibly by force of everchanging custom. Custom is a force which is generally patronized, appreciated and recognized by the rulers. Unfortunately, this country has had no kings for a long time to whose inspiring example the subjects could look up for any changes in society. In the West, even today, if a social change is required all that is to be done is for the King to initiate that change and all the people will follow as a matter of course. You might have heard the story of Edward the Eighth, who, when he was Prince of Wales, went to a far distant island and having heard from the people that their occupation was gone because of the change of fashions, asked what the fashion was which had ruined the occupation. They said formerly they were manufactures of straw hats and now straw hats had given place to felt hats and therefore, they had lost their occupation. The next day he appeared in public on a ceremonial occasion with a straw hat and

* C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3633-39.

the straw hat industry was at once revived. That is the power of the king; he is not merely the political head of a State, but head of society, the exemplar, the mentor and the monitor. As such he evaluates the customs age long, traditional and hoary—sanctified by age and it lies in his power to change that custom one way or the other. But what has been our fate since the British rule had come into existence? So long as the Muslims were ruling this country, they copied our customs and we copied their customs; there was an inter-mixture and inter-currency of customs and therefore, some measures of social progress. But after the British came, when they came to be looked upon as untouchables and even unapproachables by the vast majority of the population of this country, the situation was that they were afraid to touch the customs of this country with the longest pole. They were afraid of any interference with the socio-religious structure which was a delicate structure almost like a chemical balance and bore the repercussions of the smallest change coming from abroad and from adventitious sources. They were afraid that such repercussions would be ruinous to the stability of their empire in this country and therefore, they adopted the plausible and seemingly reasonable altitude of not interfering with the religion or the custom of the land. In this manner the Judges of the High Courts always helped to register the custom as it had existed for long centuries behind, and never registered a change in the custom as marking a progress in society. Thus custom became petrified and when custom became petrified, progress became impeded altogether, and for a hundred and fifty years our society has not been able to make any progress. If social evils had been pointed out by missionaries at one stage they were so pointed out in a spirit of carping criticism rather than in a spirit of progressive helpfulness. And as time advanced and English education took root and as democracy spread its tentacles and got firm hold upon the affections of the people another change came into being. The very missionaries and clergymen who were so keen on educated Indians throwing off the trammels of their orthodoxy became suddenly conservative and critical of the drastic changes which the English educated people were taking to with a certain amount of irresponsible case. They began to inquire whether after all these people who were so readily taking to these changes meant to take to these changes or whether they were

simply throwing away by way of relaxation the rigid customs of age and of society. They did not like it because the spirit of reform is always destructive of their own power. In the encouraging of reform themselves they saw the dangers to their rule and the missionary saw at once that he was encouraging a certain amount of rebellious spirit in the nation. Now *Brahmoism* was looked upon as the saving factor in this country, but *Brahmoism* was thereupon condemned by the missionary because it provided a hailing house for the reform spirit of the nation. Thus the misssionary himself became conservative. Englishmen became conservative, custom became rigid, society became petrified and congealed and coagulated, as it were, in a chamber which was not wide or expansive, thus, we have suffered, so much so that the issue of a post-puberty marriage in the Punjab was declared illegitimate by the High Court. This was the last straw that broke the back of progressive society. Immediately, there was an attempt to break the bones of custom, by trying to reform the marriage law. Act 3 of 1870, popularly known as the *Brahmo* Marriage Act, required, however, a certain denial statement, "I repudiate that I am a Hindu or a Muslim or a Christian or a Parsee or a Jain or a Jew." This obnoxious declaration was associated with the provisions of that Act. Therefore, it did not become popular. Later on the *Sarda* Act came into being; fortunately it has set the seal of authority upon that piece of social reform which the heads of orthodoxy were imposing and were impeding. A new era has begun. The Indian National Congress which had started in 1885 had till 1919 associated with it as an ancillary and an auxiliary a social reform organisation which dealt with the social evils of the country and suggested various legislative measures also. But there was a non willingness on the part of the British Government to effect those legislative changes and as time progressed there was also an unwillingness on the part of society to accept the social reform at the hands of foreigners in this country.

Fortunately, Sir, today we have survived those times, I am glad I am alive to see the age when on the initiative of the National Government a progressive measure of reform, comprehensive in outlook, far-reaching in its result, medical in its nature, is being put forward, which embraces the rights of women in regard to inheritance, in regard to marriage, in regard to property, in regard to divorce, in

regard to personal freedom. And I hope, as time advances we shall have more and more of reforms in this direction to which this measure points today.

Let us start with the full rights that have been conferred upon the woman after the death of her husband. In our *Shastras* it has been briefly described that the woman is the bond slave of her father when she is young, to her husband when she is middle aged and to her son when she is a mother. Of course all epigrams, aphorisms, proverbs, platitubes and truisms are half truths. There is a core of truth about them. We sometimes find it useful to quote these things but there is a core of untruth also about them and we should try to understand the full significance of all these.

According to the measures before us, a woman will have property in her own right and be able to dispose of her property. I have been trying to see whether the Law Minister would explain when these rights would come into force. Suppossing after the passing of this measure a man dies and his widow inherits his property: what are her rights compared with the rights of a widow whose husband died one year ago? The latter possesses limited estates. What is the change sought to be introduced? Can widows with only limited estates convert those limited estates into full right estates with the right to give away, to mortgage, to sell and so on, irrespective of whether there is legal necessity in the interests of the family or not? That is a point which I have been trying to understand by turning up the pages of the measure before me but I have not been able to understand it. I dare say, in his reply the Mover of the Bill will be so good as to elucidate the point.

The 'rights' of the daughter is a matter on which I have been feeling very keenly. When speaking to English people or when discussing Indian conditions and society with savants and scholars coming from abroad, I have never been tired of praising my own system. If you wish to understand the basis of a system, or appraise any of its social customs or practices, you must not lake it in its present degenerate condition. But you must take it in all its pristine purity and glory. I look upon child marriage as a splendid institution as our ancients conceived it because they conceived it good for the average man and the average woman to be married. And this marriage is a

good thing because the child has to be grafted into another family and grafting should take place while the plant is young and not when the plant has become old. But then, the conception itself has changed. Now we live in an age when it is much more happy to be bachelors and criticise others' wives than to marry and beget children. Therefore, our ideals have changed and therefore, the principle of child marriage may not be binding upon us. Each one is at liberty to live his or her own life according to her or his pleasure and there is no obligation imposed by society and social conditions have changed. Under the circumstances we should not indeed be the victims of past tradition, past customs, past events.

But how shall we deal with the facts which exist at the present day: so many daughters and so many sisters are not merely vegetating but they are rotting in their homes. While we praise our systems to others, we cannot shut from our own eyes the fact that our sisters and daughters and other relations are rotting in their own homes unable to get any relief. Latterly I have suggested a love strike for our women. That is the only remedy which I have thought out and I have been able to think it out as a remedy directed against this custom. I read a book called "The Impregnable Women" while I was in the Ahmednagar Fort. There was a war in England and all the women wanted to resist the war. How could they resist? The men are greedy. The men are pugnacious and blood-thirsty. They want to fight. They want to measure the strength of the tiger and ape it them with the strength of the ape and tiger in others. Therefore, the women said : let us have a love strike. No young maiden would speak to her lover; no wife would speak to her husband; no mother would speak to her son. The men were boycotted. There was no social life between men and women until the war about to be declared was cancelled. They said they would not mix with these people. But, I will not push the matter further. I suggest that if in a village, or town, or mohalla, there is ill-treatment of a single woman, all our wives had better have a club and go away from our houses and live there for 24 hours and very soon the recalcitrant husband will be brought to his senses. All the men will bring their moral influence to bear upon this man and they will tell him: "What the hell are you doing? All our homes are

broken up and they will remain broken unless you take back your wife."

You may laugh now. But what else are you going to do? Are you going to prosecute the man? He will bring up his charges. Are you going to prosecute the wife? She will bring a number of charges. You should not enter into the quarrels between husband and wife. Once I found a husband beating his wife. I went and interfered. The woman turned round and came down on me like a wolf on the fold. She said: "It is my husband who is beating me. Who the hell are you to interfere?" Therefore, it is not possible for you easily to interfere in domestic affairs. After all the *Kowravas* and *Pandawas* when they fought, they used to say : "we are 100 against 5 but against a third party they said we are 100 *plus* 5" So in these domestic quarrels both are against us when we meddle in their affairs. So if the daughter is to be happy she must be able to inherit property in her own right I find that the position of a wife is most obsequious. Her sister's son comes. Her brother comes. She wants to give them a good present. But the wife has to wait upon the goodwill of her husband in order to get even Rs. 5. After all this man has his moods. And he may be in a good mood or a bad mood. So she must have some properly which she can call her own. Would you wish her to get rid of some of her jewels? The idea is fantastic. No woman will sell away her jewellery even after her husband's death because after her husband's death that jewellery stands as the symbol of the unity of herself and her deceased spouse. I know it. I have spoken to many women.

Mr. Chairman : Does the Honourable Member want to speak for a longer time?

Dr. B. Pattabhi Sitaramayya : I am sorry. I was not looking at the time. I would like to continue.

Mr. Chairman : The House will now adjourn for half an hour and reassemble at Half Past Five of the Clock.

The Assembly then adjourned till Half Past Five of the Clock in the afternoon.

The Assembly re-assembled at Half Past Five of the Clock with Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

Dr. B. Pattabhi Sitaramayya : Mr. Speaker, I was dealing with the question of a share for the daughter from the patrimony. I am in the habit of twitting my lady friends by asking them "Why do you want a share ? You are going to become the queens of another home. My wife has become the queen of my home and she is the unquestioned head of the family. She is getting the keys of her own safe and so will you get the keys of the safe of another home." But that is not enough. It is not enough to be at the mercy of a husband, however dear that husband may be. A woman must have her own right and when she has her own right she is better respected by the husband and although the doctrine of self-effacement on the part of the woman has been carried on in our country and society for ages long, yet the fact remains that in the modern day the conception of self-respect has completely altered the position. One must be able to say that she has a little money to deal with in her own right.

Hitherto I have had a little doubt as to whether we are not depriving all the sons of the share to which they are legitimately entitled if the daughter also comes in for her share. Now the Bill before us gives a share in the *stridhana* to the sons to the same extent to which the daughter is given a share in the father's property. That largely equalises things and warns all parents that they should have an equal number of sons and daughters. That is the only condition that is imposed upon us and that will be able to balance our economy. We must also balance our progeny.

But there is another difficulty. After all as things stand, it looks as though we cannot say hereafter in marriage invitations that my daughter is being given in marriage to so and so, there will be a new language adopted. My daughter and so and so will marry each other. That is the new language adopted. Still the fact remains that except in Malabar, where the husbands go to their wives' houses, here our daughters generally go to their husbands' houses. Of course the position in Malabar is entirely the reverse of our conditions and it will take hours to deal with the question. I am not going to stray into that very interesting topic. Yet the fact remains when the daughter goes away from her father's home, the wonder is whether she is able to enjoy the property that is given to her by her parents. I have asked my Muslim sisters and brothers as to whether the age-long custom

of giving a half share to a daughter, half of the son's, is really practically, enjoyed. They said that except in towns it is not enjoyed. Somehow or other the brother does the sister in the eye and knocks off her property and gives her some compensation. That may or may not be so but the fact remains that there is that supreme danger and the greatest danger in this matter is that when you recognise the fact that 80 per cent of *pattadara* are able to pay only Rs. 10 as tax on 2½ acres of wet land or four or five acres of dry land, where on earth is there a chance for them to give a share to the daughter, which she can carry with her or which she can enjoy. I doubt very much from the practical side but on the theoretical side at any rate the thing is unquestionably quite correct.

When thus you have raised the status of women in society and when you have conferred upon her the right to absolute property then you must also give her certain rights which self-respect engenders in her naturally. The conditions of marriage are not conditions of slavery. It is all very well to say that marriages are made in heaven and that once a husband always a husband or once a wife always a wife. It is a very good rule but at the same time there are conditions like drunkenness, persistent cruelly, immoral character on the part of the husband, diseases like leprosy, impotency and various other conditions which are enumerated by the Law Minister which justify a separation of the husband from the wife. If a man feels free and has the right to stray abroad and to whatever he wants to do, if he can marry a second time when the first wife is alive, then of course it must be equally open for the wife also to marry a second husband while the first one is alive. Imagine that condition. I sometimes ask friends when I see a young man dressed in hat, boot and suit and by the side goes a nicely clad Hindu lady dressed in all the beautiful folds of the Hindu saree "Will you kindly reverse your dresses? Will the husband wear a *dhothi* and the wife a hat and skirt of a European woman, how will it look?" It will look absurd, as absurd as when you sign your name in your mother tongue over an English document. Once an officer asked me not to sign in Telugu over an English document. Then I said that the reverse situation of an English signature over a *Telugu* document is equally incongruous. Therefore, we must give full freedom to our sisters, mothers and daughters and enable

them to have judicial separation, if necessary and divorce. But I trust and hope that the distinguished ladies who are here and who have been labouring for years in the cause of rights for women will preach and propagate the fact and the doctrine that divorce is a reserve fund not to be drawn upon for current expenses, that divorce should be the ultimate resort for causes which are otherwise irremediable. Public opinion, personal influence, family persuasion, all these are there. You must remember that the quarrels between a husband and wife during the day are generally closed up in the night and therefore, there is not much chance of perpetuating these quarrels. We should not make much of them. In America there is a State called Indianopolis, where the porter cries "Indianopolis Station, Twenty minutes for divorce." The divorce court is in the railway station itself. Any husband and wife having a quarrel in the train, could apply for divorce and get it before the train departs. That should not be our position. Our divorce must be a kind of reserve fund like the jewellery on a woman's person, always to be drawn upon under conditions of the greatest necessity and never to be lightly utilised.

The question of adoption is a very difficult question, the Honourable Law Minister has assimilated the *Mitakashara* practice to that of the *Dayabhaga.* I suppose *Dayabhaga* obtains in Bengal and *Mitakashara* in South India and in Bombay there is a law called *Mayuka,* according to which amongst the non-Brahmins it is not necessary for the husband to give permission and the widow can adopt a child. I had read a judgment of the Privy Council some ten or twelve years ago. I want that law to be copied in other parts, where such adoption is not permissible according to *Mitakshara.* After all why does a family adopt a boy ? To perpetuate the family. Is it not the right of the widow to perpetuate the family as much as of the deceased husband? Is it only the exclusive right of the man who is deceased to perpetuate the family. If a boy could inherit the property, why should it not be open to the mother to adopt the boy in her own right apart from the written or the registered permission of her husband either by a document or by a will. In English law oral wills are permissible; whereas written wills require two signatures, oral wills require no such thing. After all, by oral wills properties worth lakhs and crores are alienated. "All to wife" on a newspaper bit is held to be a valid

will. Then why should it not be permissible in law for a husband to give permission orally to his wife in order that she can adopt. These are points which the Select Committee will have to give its consideration to. (*An Honourable Member:* "Why permission at all?") That is my contention. If permission is necessary why not oral permission? Relax the law regulating adoption as much as possible.

Then there is the question of monogamy. I am very sorry to note that young girls in their blooming youth do not understand all the conditions that must be observed in regard to the proper selection of match for marriage. We have an ancient saying which when rendered into English says : You must consider the prosperity, good looks, tradition, pedigree, culture—all these things you must consider before you select a husband. But now it has become rather common—and a very distinguished authority has confirmed the statement—that educated girls have the habit of picking readymade husbands who have already got a wife and five or six children. Why does this happen? It is due to the want of education during their college days about these matters. Somehow these things are considered taboo and everybody shrinks from talking about them although a lot of private talk is inevitably done in regard to these matters. The forbidden fruit has never remained untasted. Therefore, it is necessary that we provide teaching in regard to these matters. I once spoke to a certain friend of mine—he has given freedom to his daughter with regard to the selection of his son-in-law—and in the course of his conversation he told me a story which I later related to his daughter and son-in-law much to their amusement. She was asked by him, "Do you wish to marry so and so, a boy who is handsome, good-looking, is well educated, passed B.L., or is in the profession, is the son of a rich man and has an upstair house" and she said "No, father, has he got no motor car and elctric lights? If he has got a motor car and electric lights, no matter to whom you give me in marriage I am willing to marry him". Such are the temperaments, tendencies and trends of untutored youth and therefore, it is very necessary that we should teach them about all these matters. It is not enough to make laws: but it is necessary to propagate these laws and propagandize these laws in order to educate our young girls in the direction of monogamy. That is very necessary.

I welcome every aspect of this Bill. If there are defects which are obvious here and there I daresay they will be remedied by all the distinguished personalities whose names have been mentioned in connection with the formation of the Select Committee. I have taken a little more time than necessary. Perhaps, I can hold forth for hours together. I have got the experience of 68 years covering a careful study of all kinds of conditions and I would have liked very much to continue except for the fact that today's time is limited and we must apply the guillotine at 7 O'clock and some of our sisters and brothers are very anxious to speak and I am also anxious to hear them.

* **Mr. Naziruddin Ahmad** (West Bengal : Muslim): Sir, I am in the most unfortunate position of having been charged with the communication of certain views which have been entrusted to me by some of my friends. They are some criticisms of the Bill. I must however assure the House that personally I would fully support the Bill. Its provisions are largely in accord with the laws which prevail in my own community and the Bill tries to do absolute justice to all regardless of practical results. It is however, with some amount of nervousness that I have risen to speak. When I find that sturdy members of the House who would have spoken against the Bill have quailed before a powerful array of five distinguished members of the fair sex, ready to stand to their guns, little courage can I muster in giving out the views which I am charged to communicate.

Sir, the Honourable the Law Minister has not told us anything about the opinions that have been collected and printed in the pamphlets which have been circulated to us. They were made available to us at a very late stage. If it was desired that Honourable Members should read them, analyse them and tell the House the result of their analysis I think the time is too short. There is a pamphlet the Report of the Hindu Law Committee which contains a large number of opinions. I am sorry this was not circulated amongst the members. (*An Honourable Member* : "It was circulated"). It was not. This book was not circulated.

The Honourable Dr. B. R. Ambedkar : It was kept in the Library for a very long time.

*C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3639-42.

Mr. Naziruddin Ahmad : It was not kept in the Library for a very long time. It has been placed in the Library very recently. I had to buy it from the market. It is only recently that some copies were kept in the Liberary.

Prof. N. G. Ranga (Madras : General): What is it?

Mr. Naziruddin Ahmad : When an Honourable Member like Professor Ranga asks 'what is this?' it only shows. . .

Prof. N. G. Ranga : I asked what is it you are referring to.

Mr. Naziruddin Ahmad: The Report of the Hindu Law Committee.

Prof. N. G. Ranga: That is, the Rao Committee. Its Report has been before the public for a year.

Mr. Speaker: Whatever it be, the Honourable Member may proceed.

Mr. Naziruddin Ahmad: The Report has been published only recently. I submit that in this Report there is a dissentient minute of the late Justice D. N. Mitter. He has collected a large number of opinions against the Bill. I do not wish to read them. He has classified them province by province and subject by subject. There is no time to deal with them, but he has said that the principles of the Bill are opposed by the entire Hindu community, that is the orthodox section of the community.

I have studied as carefully as it was possible for me within the short time available, the recent opinions on the Bill obtained by the Government and circulated to us. I find there is a volume of opinion against the Bill. In fact, at the time when the Committee was hearing evidence the evidence in Bengal was also all one way. Now in the opinions circulated I find the opinion in West Bengal is all one way. It is clearly against the Bill. What is remarkable is that there is an opinion by the Secretary of the Government of Bengal in the Ministry of Law. That opinion is to be found in paper No. 4, opinion No. 17. That opinion is against the Bill. It says that this is not a proper time to take the Bill. (*An Honourable Member* : 'When was that '?) It bears no date. It has been circulated only recently—five or six days ago. In fact it says that the Bill is of far-reaching importance and enough consideration has not been given to the opinions expressed. The House will be pleased to consider the different categories of

objections. One is that, this Bill should not be considered by a mixed Legislature consisting of members of various communities. It is for this reason that I am particularly anxious to speak as it was feared that men of different communities will rather support the Bill and spoil the cause of orthodox Hinduism. It is for this reason that I hasten to declare that I am not supporting the Bill as the Hindu community is much against it.

One of the objections is that the introduction of women's shares would introduce litigation. There are many opinions that this would lead to excessive fragmentation that it will lead ultimately to the destruction of that joint family system amongst the Hindus which has saved the community from the destructive effects of fragmentation from which the Muslims most terribly suffer. It is said also that the Hindu law—the *Vedic* literature and the *post Vedic* literature known as the "*Srutis*" and the "*Smritis*" have a divine origin. But the present Bill goes, it is said, against the very structure, the very religious basis and the very religious structure of the Hindus. It is on this ground that is seriously opposed. It is argued that you cannot regard all this religious law, all this sacred literature as so much nonsensical superstition. They have kept the Hindu society alive for ages though it is quite true that society cannot remain stagnant. It must move. But it must move cautiously and with experience.

The present Bill makes a change with a sweeping stroke. Another point that has been made apparent in these objections is that the present Legislature was elected on one issue, namely the attainment of independence. The present Bill, which is really of a very sweeping and complicated character, and its principles have not been before the public and it would therefore, be better to wait to digest opinions and to pass a constitution and hold elections making this a definite issue before the public. It will then be seen whether the public at large really desire it. In fact it is said that the Bill was not properly circulated. Many associations got only a few days' time or even a few hours time to consider and give their opinions. In these circumstances it is argued that the Bill should not be taken into consideration at this stage.

Then there is another important aspect of the question. The Bill attempts to make the law applicable to Hindus uniformly throughout

India, but it has been pointed out that the effect of uniformity will not be attained in view of the shortness of time. It is well known that agricultural land is beyond the purview of this House. It is a provincial subject. Whatever law we may pass will affect only non-agricultural land, whatever that expression may mean. That expression is also vague. It has been defined in the Income Tax Act for the purpose of taxation and this Bill as well as many other Acts have taken that as the basis. There may be lands which lie midway between agricultural and non-agricultural lands. In fact, apart from this distinction, a large proportion of our property—about 80 per cent—consists of culturable land. Thus it is perfectly clear that the Provinces will have to deal with them and they may deal with them in a different manner and some provinces may not deal with them at all. And then again we have the acceded States. Though Hindu Law is to be the same—and it is attempted to make it uniform—the States people may legislate or may not legislate, and in case they legislate they may make different provisions. In fact the Provincial Governments and the States will be largely guided by local custom and local opinion and I believe it will be extremely difficult for the West Bengal Legislature to pass a law which is so much against the opinion of that Province. It will therefore come to this that if we pass this law the result would be that in the case of a man having two classes of properties—a house or building and certain agricultural land—one set of law will apply to non-agricultural land and another set of law will apply to agricultural land. Whatever law you pass, it should be uniform and it would be far better to collect opinions from the Provincial Governments and to ask for their consent to give jurisdiction to this House to pass a comprehensive legislation as we have done in some cases. If comprehensiveness and completeness is the objective, it is better that the Central Legislature should be armed with their consent and deal with it on an all-India basis, and it would also be a proper tiling to ask the States to co-operate in this matter. These are some of the difficulties. As we are working against time, it is impossible, as the Honourable the Law Minister has pointed out, to deal with even some of the salient features of the Bill. It is also impossible to deal with some of the objections except from the border point of view. One thing that strikes me is that the opinions have not been very carefully

studied. We have not got any analysis of these opinions collected point by point and supplied to the members to enable them to deal with them. It is very difficult for private Members to read the opinions at a high speed and to analyse them, store them in different compartments of their brains and use them in a classified form. On a matter of such great importance as this, it would have been extremely desirable for the Honourable Minister's Department to classify the opinions, as was done before in such cases, and circulate them to enable members to consider each point in the light of the objections or support in respect of each of them.

Shri L. Krishnaswami Bharati (Madras : General): It is there in the Report of the Law Committee, classified, analysed and all that.

Mr. Naziruddin Ahmad : I am grateful for the remark, but the opinions of which I am speaking have been received and circulated after the report. In fact the opinions which have been circulated by the Department were received only recently and they are on the Bill as it is. But the opinions collected in the Report of the Hindu Law Committee were collected before the drafting of the Bill, that is during the enquiry stage. The Honourable Member has missed the point that the opinions I am speaking of are not those publised in the Report. They were separately printed and circulated. These are the opinions which I talk of. I think these should have been carefully analysed and printed along with the various points. Sir, I do not wish to labour the matter. Personally I am in favour of the Bill, but these are some of the objections which I have been asked to put forward by certain of my friends. That is the reason why I have put them before the House. There are a large number of other points, but they are of a minor nature. In view of the shortness of the time at our disposal I think I should cut short my speech. Then again legislation should rather follow public opinion. It should follow rather than create or override public opinion, and I am giving a quotation from a famous authority, the father of modern politics, Edmond Burke. He said on a famous occasion:

> "To follow, not to force the public inclinations, to give direction, a form and technical dress and a specific sanction to the general sense of the community is the true end of legislation."

But it has been pointed in the objections that there is no public opinion behind this Bill. It is pointed out in some of the objections that only some of the educated section and some of the ultra-modern section are behind it, but the masses, most of whom are ignorant, are indifferent to it and it has not been fully circulated in the way a subject of this importance should have been. In these circumstances, I submit this for the consideration of the House that it would have been better if the House gave directions to the Select Committee in matters of a disputed nature, but in this case we are sending the Bill without any directions. I should seek a little clarification from the Honourable Minister for Law. With these few words, Sir, I hope the points raised in the objections would be carefully considered and due decisions would be reached.

With regard to the personnel of the Select Committee, nothing could be said. The ablest, the most authorititave and most well-informed of the Members have been taken in it and I hope and believe that they will do full justice to the objections raised against the Bill.

*** Shrimati Hansa Mehta** (Bombay : General): Mr. Speaker, Sir, I congratulate the Honourable Minister for bringing this Bill even at this late hour of the Session. I also congratulate or rather I express my sense of gratitude to Sir B. N. Rau and his colleagues for the great labour they have bestowed on the Report on which these recommendations are based. This Bill to codify the Hindu Law is a revolutionary Bill and though we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus. But since this Bill was drafted many things have happened and one of the biggest things that has happened is the achievement of our political freedom. Our new Constitution is in the making; we have already agreed upon the fundamental principles on which this new Constitution is to be drafted. The new State is going to be a democratic State and democracy is based on the equality of individuals. It is from this point of view that we have now to approach the problems of inheritance and marriage etc. that are before us. The Select Committee will therefore, have to see that the new Bill is drafted on these principles.

6-00 P.M.

*C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3642-44.

It is true that the Code has abolished the six discrimination with regard to inheritance. A woman is recognised as an heir and she is also entitled to enjoy her property in her full rights; that is, the Code has abolished the limited estate of the woman. Even then we feel that it does not go far enough. A daughter who is recognised an heir inherits the property, but she inherits half the share of the son. This violates the principle of equality on which we have again and again said that our new Constitution is going to be based—a Constitution which aims to secure for the people of this country justice, social, political and economic. We, therefore, feel that the daughter should get an equal share in the property of her father with the son and the son also should get an equal share in the property of his mother with the daughter. It is also argued that a daughter gets her share from her father as well as from her husband, while the man does not get anything from his wife. We have already proposed, that is the Women's Organisations have said, that the husband can also inherit the property of his wife in the same way that the wife inherits the property of her husband. In the Indian Succession Act the provision for the inheritance of husband is already there and I think we shall do well to copy that provision.

People have argued, and the honourable friend who spoke before me has said that if a daughter is given her share, especially in a landed property, there will be fragmentation of land. But why is this argument trotted out in the case of a daughter's inheritance? The same thing applies if a man has more than one son; if he has, say, four or five sons the land has to be fragmented; why is the argument not trotted out then, and only trotted out when the question of daughters inheriting the property comes up? The better thing would be that there should be law against fragmentation and the property should be sold if it goes below the prescribed limit. Or there is another alternative and that is collectivisation of the land.

Then with regard to the question of marriage. I am gratified, and the women of India will be very happy to know, that the principle of monogamy is recognised, and if the Code comes into being then the principle of monogamy will be established. Sir, we have felt that all civilised nations, all civilised communities have adopted the principle of monogamy. Disrespect for women and all the atrocities that we hear of perpetrated on women are I think due to the fact

that this principle of polygamy exists. If we had monogamy, I do not think that women would have been abducted, married off or other things would have happened to them. This is a very wholesome principle and I hope the House will accept it.

But with regard to some of the conditions of marriage there are one or two points that I would like to suggest. With regard to the marriage of the *sapindas* and the definition of *sapinda*, that requires a little revision; we are not quite satisfied with the definition that is given in the Code. Then again, we would like the age of marriage also to be a condition of a valid marriage. We have got the Sarda Act but that is not satisfactory; that has not satisfied the people because it has not been able to prevent child marriages; it is not effective. For that reason we would like the law to be more drastic. If we want sixteen to be the age of marriage, then it is very necessary that it should be included as one of the conditions of valid marriage and I would like the Select Committee to make that change.

Then with regard to divorce, even that from the point of view of some does not go far enough. There is, however, one thing that I would like to bring to the notice of the members of the Select Committee and that is, the time given for desertion. If a man or a woman deserts his or her spouse, it has been provided, he or she can divorce her or him after five years. Five years is the period given in the Code. Even in "*Narad Smriti*" it is given that a childless woman should wait for three years. After three years she can marry again. So why not also bring that particular provision here that if a woman is childless, she need not wait till five years, but can divorce her husband after three years? If a woman has got children, then five years would be the right period, but for a childless woman three years would be a reasonable period.

With regard to guardianship, here also the Code has not made any changes in the present law. Father is the natural guardian of the children. The mother does not come in. We would like the mother also to be a co-guardian of the children with the father.

With regard to adoption, I think the whole chapter should be scrapped. We are a secular State. We want to be a secular State. Adoption in Hindu law is for religious purposes. Why should a secular State have anything to do with a religious custom? What we are

concerned with is whether adoption which is for religious purposes should be recognised by the State for purposes of inheritance. We say that it should not. If a child is adopted—whether it is a boy or a girl—we would like a daughter also to be adopted—if a child is adopted not for religious purpose, but for real purpose, i.e. that the parents want a child, then that child should have the same rights as the natural child. But, if there is adoption for religious purposes, only then I think that adoption should not be recognised for purposes of inheritance.

These are some of the important points that I would like the Select Committee to consider. Speeches have been made, at least my Honourable friend Dr. Pattabhi has made a very long speech—praising all sorts of things about our past traditions. We have looked too much to the past. We must now look to the future. It is for the future generation that we are making this law. It is not for us, but for the future generation that is coming after us that this law will be applied. We have to look to the future conditions. After all, it is the conditions that determine the law. The law reflects the society. The law reflects the conditions in which the people live. We have to see that the future generation is not fettered by our own prejudices with regard to marriage or divorce or with regard to any other ideas that we may have today. I hope the Select Committee will consider that and produce a Bill which will be a great boon to the future Hindu society.

*** Shri Ram Sahai** (Gwalior State): (*English translation of the Hindi speech*) Mr. Speaker, Sir, I have nothing to say particularly in reference to the Bill. I appreciate the manner in which this Bill has been drafted after keeping in view the needs of the present day Hindu Society. But, I find in it one or two defects, and I think it necessary to explain them for the consideration of the Select Committee.

It has been laid down in Section 3(6) of Part IV of the Bill that in case of minor girls, the consent of her guardian must be obtained for her marriage. But so far as the question of declaring the marriage as invalid is concerned, it has been stated in Section 5 that it shall not be deemed to be invalid merely on the ground that such consent was not or had not been obtained. I fail to understand why it should not be deemed to be invalid when it has been expressely laid down

* C.A. (Leg.) D., 9th April 1948, pp. 3646-47.

that the consent of the guardian must be obtained. If the consent of the guardian had been obtained by means of fraud or force, that marriage can be deemed to be invalid, but if the consent had not been obtained at all, then why should not the marriage be deemed to be invalid? On the contrary it has been laid down that the marriage will not be deemed to be invalid merely for this reason. This is the one defect which should be considered by the Select Committee.

Another point which I have to mention is in regard to 'Succession' and which Mrs. Hansa Mehta has just referred to in her speech. But I do not see eye to eye with the views expressed by her and am of the opinion that the manner in which the order of succession has been prescribed ignores the fundamental tenets of *Dharam Shastras* (Hindu Code of Law). I do not mean that the women should not be given any rights. I am of the opinion that, they have been given more rights here than men. I may point out that while a daughter gets a share both in her patrimony and the property of her husband's family, there does not exist any such provision in this Bill which gives a man a share in the property of his father-in-law in addition to his patrimony. The men are thus, being subjected to the same injustice which has uptil now been done to the women. On the contrary, it can be argued that the share which his wife will get in her patrimony will make up the deficiency. But after considering objects underlying the Bill and the worldly conditions which have necessitated it, it is felt that the real problem remains unsolved. The reason for this is that the property which a woman acquires out of her patrimony shall be treated as her Stridhana and her husband will have no right to that, therefore, he will not derive any particular benefit from this. In this way, I submit this second point for consideration by the Select Committee which is very essential.

I have yet to say another thing. Whatever may be the differences between the tenets of *Dharam shastra* and the present day conditions, I feel that we must follow the fundamental principles propounded therein; and keeping these in view we should decide all the issues. We should make only those changes which are considered necessary in view of the present conditions and trend of the society. We should not resort to introduce any change merely under excitement or in imitation of the western civilisation which may obstruct the growth of our society and produce some sort of difficulties that may not be desirable.

Therefore, I would submit that those who are members of the Select Committee should consider these things and try to make necessary amendments.

*** Dr. B. V. Keskar** (U.P.: General): Sir, I take this opportunity of congratulating the Honourable the Law Minister for bringing this Bill forward in spite of the inordinate delay that has taken place since this idea was first conceived. Sir there is no doubt that this is a very, very important Bill. As my Honourable friend, Dr. Pattabhi said, I do not think there has been any bill so radical and so revolutionary which is trying to change the very foundations of Hindu society, a society which has remained fossilized for the last thousand years. No doubt and it is to that that I want to draw the attention of this House and the members of the Select Committee, the very fact that this society has remained fossilized for the last thousand years and has developed such inertia, such lethargy, in the body politic that all manner and all kinds of forces will come forward to impede the passing of this Bill and passing of any Bill to change the existing structure of Hindu society. It is to this inertia, this lethargy of Hindu society which has probably become its bane, that the members of the Select Committee and the honourable the Law Minister will have to look to, because I have no doubt that until this Bill is passed, to the very last moment every sort of effort, will be made to see that this Bill does not become a law. The changes that are suggested are such that there is a fundamental change in Hindu law. I know mat orthodoxy will try in every way. My honourable friend, Mr. Naziruddin Ahmad was good enough to voice the alarm of a certain section of the orthodox society about the revolutionary nature of this Bill. No doubt, some of the changes suggested appear revolutionary. But as Dr. Pattabhi rightly observed the changes are really not revolutionary. They are due to the fact that for the last so many centuries, Hindu society has not been allowed to evolve. So we have to try to change in a few days what would have been done in centuries. I would, therefore, ask the Members of the Select Committee not to fall a prey to the pressure of what is called the so-called orthodox opinion which is really the opinion of the inertia of so many centuries which does not want anything to change, but after thinking over it for years and years,

* C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3647-48.

which really considers that any change is an attack on Hindu religion. I would ask them to guard against these and go forward in spite of all this pressure.

There is no doubt that quite apart from the question of making any radical change in Hindu law, the necessity for consolidating the Hindu law was very urgent. Sir, the present day Hindu law is a maze; it is a jungle like the *Tarai* or *Sunderbans* in which all sorts of practices and traditions come up; in which all that *puranic* book and prevailing customs in many parts of India, in many regions and provinces, in many castes, sub-castes; sub-sub-castes come into play and which is naturally a paradise for lawyers. This to a certain extent might not have been undesirable, but it has grown to such an extent that the time has come when this maze of traditions and counter-traditions should be put an end to and we must rationalize and consolidate the law. This is quite apart from any question of changing the Hindu Law. So from both points of view, I consider that a bill of this kind is overdue.

I rather would warn the members of the Select Committee to see that the Bill is not delayed too much. Already the first Committee was appointed in 1944. The idea and some of the proposals about the Bill have been circulating for the last so many years and even now we find before us proposals which will circulate it the more. Now, I would like them to try to curb this period of discussion as little as possible and to bring this Bill before the House, the latest before the next session. Sir, I welcome this Bill.

*** Begum Aizaz Rasul** (U.P.: Muslim): Sir, I do not desire to take up much time of the House, because I know that the time is very limited, but I think I would be failing in my duty if I do not stand up and welcome the measure that has just been brought before the House by the Honourable the Law Minister. Sir, it is in the fitness of things that with the achievement of freedom in this country and the establishment of a National Government, a measure of this kind should have been brought before this House. I only hope that the Select Committee will not delay giving its report and that this House will have an opportunity of passing this measure into law and putting it on the statute book as early as possible.

* C.A. (Leg.) D., Vol. IV, 9th April 1948, p. 3648.

There is no doubt, Sir, that the provisions of this Bill are extremely farreaching and the provisions about marriage, divorce, inheritance and adoption that are being brought forward are extremely redical measures. It is an extremely important matter and the codification of Hindu law will certainly be looked upon as one of the most momentous pieces of legislation that has ever been brought forward in this House.

Sir, without going into the different clauses of this Bill, I welcome this measure. Sir, it is by the status of the women of a country that the society of that country is judged and there is no doubt that the Hindu women were very backward in India. The Muslims have taken pride in the fact that the *Shariat* law gives them great rights. I agree with my Honourable friend, Dr. Pattabhi when he said that although the *Shariat* has given many rights, they are not followed in the letter and I do know that there are many parts in India today where in spite of the fact that Muslim women do enjoy all the rights given to them by *Shariat,* they are not being followed in the letter at all. In the Punjab the customary law still prevails and the daughters are absolutely disinherited from the property of their fathers. In the same way in the U.P. although in some parts of the Province *Shariat* has prevailed, Muslim women do not share in the property amongst the *talukdars* and therefore, I am glad that this piece of legislation that is being brought forward will put the Hindu women on a par with Muslim women as far as their rights are concerned. As I said, Sir, I hope that no section of society will oppose this measure. There is no doubt that this being such a fundamental treasure and also connected in many ways with religion, there will be certain sections of society amongst the Hindus who will oppose it, but, Sir, it needs courageous minds to bring forward courageous measures and therefore, I hope that orthodox opinion in the country which looks with disfavour upon this legislation will not stand in the way of its being passed and I hope that this Bill that is going now to the Select Committee will come out even in a more improved form and that this measure will not be delayed. Society should not be static and as we go forward on the road to progress, it is necessary that women should come into their own and unless the women of India stand on their own feet economically, it is absolutely impossible for India to go forward on the road to progress. With these few words, I give my whole-hearted support to this measure.

*** Shri Rohini Kumar Chaudhuri** (Assam : General): Sir, I think I must congratulate the Honourable Minister-in-charge of this Bill. He must have greatly liked this hour of the day when he has received so much ovation from certain sections of the House. But, I think, I should not be considered to be criticising in a wrong spirit when I say that the title of this Bill is a misnomer; it is not a Hindu Code but it should more appropriately have been called a Hindu Women's Code. Sir, I do not understand why only three or four days after we passed the Resolution about having a secular Government and stopping of communal organisations we should have gone out of our way to legislate in such a hasty manner only for a particular community. After having decided to eschew all communal organisations I should like to know why we should not have been given time to think out and draw up a piece of legislation which would include all subjects of the State, Hindu, Muslim, Christian, etc. If the Honourable Minister is not led away by fair influences in this House, I think it is not yet too late to withdraw this Bill and if he withdraws it with a promise to bring in a more comprehensive Bill at a later date, his action in so withdrawing would have greater merit than the withdrawal which he made a few minutes ago. I know that some women of our country are very anxious to snatch away a portion of inheritance from their brothers; I know some influential women of this country are anxious to put an end to marriages to which they were unwillingly led and which they have found unbearable. It is also perhaps a fact that some educated and progressive ladies of our country who cannot think of polygamy of any kind are now anxious to have legislation for the removal of these things. By enacting this Hindu Code you are revolutionising the whole structure of Hindu life and law and custom. But for whom are you doing it and who is going to be benefited by it? The large mass of people who depend on agriculture and agricultral property are outside the pale of this legislation. Are the poorer Hindus in our villages clamouring for divorce? Are they clamouring for properties to be got from their parents? Not at all. You want this legislation for what you call the enlightened section of our people, men and women. It is for the rich man who gave his daughter in marriage to a poor man who hoped to give his wife some

* C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3648-50.

position but has not been able to give it and his daughter has become unhappy; and so he wants to get rid of this marriage. This legislation is going to help that kind of individual.

Then, Sir, with reference to custom and usage, custom plays a very important part in Hindu law as administered in my province. I want to lay particular stress on our province because there is no one who represents us in the Select Committee. As all lawyers would know, the customs which have taken the place of Hindu law in Assam are very peculiar. I can cite the Privy Council case of "*Maniram Katita*" versus "*Keri Kalitani*" which has practically revolutionised Hindu law as administered among the Hindus.

Then there is the question of tribal people. According to this Bill they would be considered Hindus and they are really Hindus if they have not adopted Islam or Christianity or Buddhism, etc. Are you going to thrust on them this piece of legislation? If you ask them to have this system of inheritance they will simply revolt against you. There are different kinds of custom in Assam. Amongst the *Khasia* people of Assam the youngest daughter inherits the property. Now you are giving it to the widow, the son's widow, the widowed daughter, the son's daughter-in-law and so forth. Will they tolerate it for a moment if you introduce this legislation among them? You have introduced sacramental marriage and civil marriage. Shall I tell you how the *Cacharis* get married? Some boy and girl come to know each other and the girl is forcibly taken away from the parents after which the ceremony of marriage takes place. Will you ask them to got to the Registrar's Office and get married there?

Then we are very much against dowry. These rich people who can afford to give dowry get their daughters married very quickly, even though they may be blind or ugly. If I had no money I would mortgage my house and everything that I possess in order to give a dowry and thus get rid of my daughter. But what will happen now? The daughter will inherit part of the property. So when I seek brides for my sons—fortunately I have five sons—I shall look forward to that family where the daughters will inherit something and not go to an ordinary person who will have to borrow or mortgage his property. Are you going to legislate for poor people in this way? Among the poor there is only agricultural property. If you include the tea gardens

that is different, but there is no agricultural property among them. And there is no question of big inheritance and therefore, the poor man's daughter, however beautiful and accomplished she may be has no chance. I think this measure requires very serious consideration, so far as customs and usage and other points are concerned and it is not proper to pass this legislation in such hurry. I should have said something more also, Sir, but in this House there are persons who are still unmarried; so it would not be fair on my part to disclose all my objections to this Bill.

*** The Honourable Dr. B. R. Ambedkar** : Mr. Speaker, my task is considerably lightened by the fact that the Bill has received such an ample measure of support from this House. I shall, therefore, confine myself to replying to some of the points which have been made by the speakers who have participated in this debate.

I would begin with the observations made by my honourable friend, Mr. Naziruddin Ahmad. Sir, I thought that the Legislature was not a court and that a Member of this House who is a lawyer certainly does not come here either to practise or to plead. But somehow my friend either for fee or out of pure generosity, undertook the task of representing the views of some of his clients who probably had not the courage to say what they had in their mind. I shall, however, not raise any technical objections but deal with the points that he has made.

Sir, his complaint was that the Bill had no sufficient publicity and that the public was not given as ample an opportunity as the importance of the measure required. I should have thought that the clients of my honourable friend had rather misinformed him on this point. This Bill had its origin in a legislation which took effect in the year 1937. Ever since that year the provisions of this Bill have been bandied from one side to the other, from committee to committee. For instance in the year 1941, the Home Department appointed a Committee to consider some of the difficulties that arose out of the Women's Rights to Property Act of 1937, to report upon the difficulties and to suggest remedies. This Committee which is known as the Rau Committee made its report on the 19th June 1941. My Honourable friend, if he had referred to this report would have seen the immense amount of publicity

*C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3650-53.

that Committee gave to its proposals, the number of questionnaires that it issued, the statements that it received, the witnesses that it examined and the peregrinations it undertook from province to province in order to ascertain local public opinion. Again in 1942 this very Committee submitted two draft Bills, one on succession and the other on marriage. The Hindu Succession Bill was introduced in the Assembly in 1943. That was referred to a joint Committee of both Houses. That joint committee again invited public opinion and a volume of them were collected and circulated to the then legislature in existence. Having regard to all these, I am sure that the statement made by my honourable friend that the Government had not given sufficient publicity cannot be accepted as truth.

He also referred to the report, the Minority Report of Justice Mitter, where also he has analysed the *pros and cons* of the various points contained in this Bill. Sir, I do not like to say anything derogatory of a member of a Committee, who has done such useful work, but I cannot help saying that this member really ran away from his own opinion. If my honourable friend, Mr. Naziruddin Ahmad were to read the report of the majority he will find that all the propositions contained in that Bill which give rights to women were really based upon a publication of this member of the Committee in the year 1930. In that book he had propounded the view that the case law which had limited the rights of the women had no foundation. Ultimately for reasons best known to him he did no submit that there is no point in this argument.

My honourable friend also referred to the fact that this Bill is after all confined to property other than agricultural land. The conclusion he drew from that fact was that this codification was only a partial codification, because a large part of the property which is the subject matter of inheritance is felt untouched by the provisions of this Bill. Sir, there are two explanations for the non-inclusion of agricultural property*. My honourable friend, if he refers to the Schedules to the Government of India Act, where the subject matter of legislation for Centre and the Provinces have been set out will find that land is put in the “Provincial List”. As a result of the judicial interpretation given by the Federal Court it was held that the word “land” or item “land”,

* Misprinted as ‘ non-agricultural property, in the Debates at p. 3651.

which is included in the "Provincial List" not merely covered tenancy land but also covered succession to land and consequently any provision with regard to the succession to land made by the Central Legislature would be *ultra vires.* In order that this may not happen, the Committee very deliberately exempted agricultural land from the provisions of this Bill. But what I would like to say is something different. I should have thought that the omission of land from this Bill far from being a flaw or a fault in the Bill was probably an advantage because I believe there is no necessity that a uniform law of inheritance should apply to all sorts of property. Property varies in its nature, varies in its importance in the social life of the community and consequently it may be a matter of no mean advantage for society to have one set of law of inheritance for agricultural property and another set of law for non-agricultural property. It may be that on a better consideration of the situation, Indian or Hindu society may come to the conclusion that land which is the foundation of its economic life had better be governed by the law of primogeniture so that neither the junior sons nor females may take part in the inheritance. As I said, the question having been left open it is to the advantage of the society that it may consider the matter *de novo* and afresh. I do not, therefore, regard that the comment made by my honourable friend on the part of this Bill is really a matter to be apologised for.

Coming to my friend, Mr. Chaudhuri, he considers, this piece of legislation as a communal legislation. I agree that in as much as it refers to Hindu society, which is one of the many communities inhabiting this country, it might well in a logical sense be called a communal piece of legislation. But what is the alternative? If my honourable friend's alternative was that there ought not to be communal laws of inheritance and communal laws of marriage but there ought to be a common civil code, applying to all sections all communities, all persons: in fact applying to citizens without discrimination as to religion, creed or caste, I am certainly one with him. Certainly, that is not his conclusion. His conclusion is, if I understand him, that this legislation by reason of the fact that the other day a view was expressed that the future society here stated would be secular had no right to legislate for a secular community: that would be a most disastrous conclusion. This country is inhabited by very many communities. Each

one has its special laws and merely because the State desired to assume a secular character it should withdraw itself from regulating the lives of the various communities, undoubtedly would result in nothing but chaos and anarchy. I certainly myself am not prepared to subscribe to that sort of a proposition.

His second comment was that the Bill had not taken into consideration the customary law. He cited some ruling of the Privy Council. I should have thought that at this hour of the day it was unnecessary to cite the authority of the Privy Council because it has been well established by a long course of decisions, that so far as the Hindus are concerned custom would override the text of the "*Smriti*". We all know this. But what are we doing? What are we doing is this. We are shutting down the growth of new customs. We are not destroying existing customs. The existing customs we are recognising because the rules of law which are prevalent in Hindu society are the result of customs. They are born out of custom and we feel that they have now grown so sturdy that we can indeed give them flesh and life in the body politic by our legislation.

He also said that we had not taken into consideration the question of the tribal people, whose life is undoubtedly governed in a large measure by customary law. If my friend had read the definition in this code as to who is a Hindu and who is not and to whom this Code applied, he would have seen that there is a clause which merely said that persons who are not Muslims, Parsis or Christians shall be presumed to be Hindus: not that they are Hindus. The result is that if a tribal individual chooses to say that he is not a Hindu it would be perfectly open to him under this Code to give evidence in support of his contention that he is not a Hindu and if that conclusion is accepted by the Court he certainly would not be obliged by anything contained in this Bill.

Shri Rohini Kumar Chaudhuri : My point is that he did not like to be called a Hindu and still wanted to retain all the customs of the Hindu !

The Honourable Dr. B. R. Ambedkar : The position taken is this : that once a person chooses to call himself a Hindu, he must accept the generality of law which is prescribed for the Hindu. We do not want this anarchy. A Hindu is a Hindu for all purposes. If a tribal

person does not want to be a Hindu the way is open to him to prove that he is not and the Bill will not apply to him.

Then my friend, Dr. Sitaramayya asked me to tell him whether the rule of law contained in this Bill, whereby the women will acquire absolute estate in the property which they inherit, will apply to widows who have already taken the estate before the passing of the Act. I am afraid I must say that the Bill has no retrospective effect.

Nor would it be possible to give retrospective effect to the principles of the absolute property of women for the simple reason that long before this Bill will come into existence, vested rights would have been created in that estate and it would not be right and proper to divest them however much our suympathy may be with the widow.

Mrs. Hansa Mehta raised several questions indicating that the women and particularly herself were not satisfied with some of the provisions contained in the Bill relating to the rights of women. It may be that in an ideal sense the Bill does not come up to expectations. But I would like to tell her that she must remember that this society is an inert society. The Hindu Society has always believed that law-making is the function either of God or the "*Smriti*" and that Hindu Society has no right to change the law. That being so, the law in Hindu Society has remained what it was for generations to come. Society has never accepted its own power and its own responsibility in moulding its social, economic and legal life. It is for the first time that we are persuading Hindu Society to take this big step and I have not the slightest doubt in my mind that a society which has bucked up courage enough to tolerate the large step that we are asking it to take by reason of this Bill, will not hesitate to march on the path that remains to be trodden and reach the goal that she has in mind.

Sir, much has been made of the fact that there is a great deal of public opinion which is opposed to this Bill. I have certainly not weighed the opinions that we have received but I do like to say this, that this is hardly a question which we can decide by counting heads. This is not a question which we can decide in accordance with the opinion of the majority. When society is in a transitory stage, leaving the past, going to the future, there are bound to be opposing considerations: one pulling towards the past and one pulling towards the future and the test that we can apply is no other than the test

of one's conscience. I have not the slightest doubt in my mind that the provisions of this Bill are in perfect consonance with the conscience of the community, and I have therefore, no hesitation in putting forth this measure although it may be as a matter of fact that a large majority of our countrymen do not accept it.

Mr. Speaker: The question is:

"That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M Ananthasayanam Ayyangar, Shrimati G. Durgabai, Shri L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya, Shri Mihir Lal Chattopadhyay, Dr. P.S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khurshed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover with instructions to report not later than the last day of the first week of the next session of me Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be Five."

The Motion was adopted.

Mr. Speaker: This brings to a close our long session which commenced on the 28th of January and I heartily thank all the Members for the sincere co-operation, which I have always had from them.

(The Assembly then adjourned sine die.)

❑❑

SECTION II

THE DRAFT HINDU CODE BILL

BY

DR. B.R. AMBEDKAR ALONG WITH

THE THEN EXISTING HINDU CODE AS

AMENDED BY THE SELECT COMMITTEE

THE HINDU CODE

BY

Dr. B. R. AMBEDKAR

NOTE

In order to give a clear picture of the amendments which the Government propose to move, the Code as proposed to be further amended is set out in this book on the left-hand side. For the sake of convenience the existing provisions of the draft Code as amended by the Select Committee are printed on the right-hand side. The actual amendments which are to be moved are shown on the left-hand side by having them either underlined or sidelined. Portions omitted are shown by asterisks; and where any page on either side of the book appears blank, it means either that there is no corresponding provision in the Select Committee's Code or that a portion of the Select Committee's Code has been omitted.

[AS PROPOSED TO BE FURTHER AMENDED]

(*Changes to be made are underlined or side-lined and portions to be omitted are shown by asterisks*)

A

Bill

to amend and codify certain branches of the Hindu Law

* * * * *

BE it enacted by Parliament as follows :—

PART I—PRELIMINARY

1. Short title and extent * * *.—(1) This Act may be called the Hindu Code, 1950

(2) It extends to the whole of India except the State of Jammu and Kashmir

* * * * *

[AS PROPOSED TO THE SELECT COMMITTEE]

A

BILL

to amend and codify certain branches of the Hindu Law

WHEREAS it is expedient to amend and codify certain branches of the Hindu Law as now in force in the Provinces of India;

It is hereby enacted as follows ;—

PART I—PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Hindu Code, 1948. **Part I, See. I, Page I.**

(2) It extends to all the Provinces of India.

(3) It shall come into force on the first of January, 195 .

*(2)

2. Application of Code.—(1) This Code applies—

(a) to all * * * * persons who are Hindus by religion in any of its forms or developments, including Virashaivas or Lingayatas and members of the Brahmo, the Prarthana or the Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion;

(c) (i) to any child, legitimate or illegitimate both of whose parents are Hindus within the meaning of this section.

(ii) to any child, legitimate or illegitimate, one of whose parents is a Hindu within the meaning of this section: provided that such child is brought up as a member of the community, group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu, Budhist, Jain or Sikh religion,

(2) This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion :

Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters.

(3) The expression "Hindu" in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless governed by the provisions of this Code.

* * * * * *

(3)

3. Definitions.—In this Code, unless the context otherwise requires,—

(i) "Aliyasantana law" means the system of law applicable to persons who, if this Code had not been passed would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);

(ii) the expressions "custom" and "usage" signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

* Original page numbers of the Government of India publication are put above and below the respective portions in bracket.

2. Application of Code.—(1) This Code applies—

(a) to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayatas and members of the Brahmo, the Prarthana or the Arya Samaj; **Part I, section 2, page 1.**

(b) to any person who is a Buddhist, Jaina or Sikh by religion;

(c) (i) to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section.

(ii) to any child, legitimate or illegitimate, one of whose parents is a Hindu within the meaning of this section; provided that such child is brought up as a member of the community group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu religion.

(2) This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion : **Part I, section 2, page 1.**

Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters.

(3) The expression "Hindu" in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code.

(4) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all Hindus whose marriages have been solemnized under the provisions of that Act prior to the commencement of this Code. **Part I, section 6, page 2 and schedule I, page 30.**

(2)

3. Definitions.—In this Code, unless there is anything repugnant in the subject or context,— **Part I, secs. 4 and 5, page 2.**

(i) the expressions "custom" and "usage" signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(ii) the expression "district court" means the principal civil court of original jurisdiction and except in sections 44 and 49, includes the High Court in the exercise of its ordinary original civil jurisdiction; **Part I, sec. 5(d), page 2.**

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(iv) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(v) "uterine blood".— two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In Clauses (iv) and (v) "ancestor" includes the father and "ancestress" the mother;

(vi) "Marumakkattayam law" means the system of law applicable to persons:—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act II of 1100, the Travancore Ezhava Act, III of 1100, the Nanjinad Vellala Act, 1101, the Travancore Kashatriya Act, 1108, the Travancore Krishnavaka—Marumukkathayam Act, 1115. the Cochin Thiyya Act VIII of 1107, the Cohin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras and who, if this Code had not been passed would have been governed by any system of inheritance in which descent is traced through the female line;

but does not include the Aliyasantana law;

(vii) "Nambudri law" means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114) or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);

(viii) "Part" means a Part of this Code;

(ix) "prescribed" means prescribed by rules made under this Code;

(x) "related" means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly;

(xi) "son" includes an adopted son, whether adopted before or after the commencement of this Code, but does not include an illegitimate son.

(iii) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives; **Sec. 5(e)**

(iv) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands; **Sec. 5(e)**

Explanation.—In this Clause "ancestor" includes the father and "ancestress" the mother;

(v) "Part" means any Part of this Code; **Sec. 5(h)**

(vi) "prescribed" means prescribed by rules made under this Code;

(vii) "related" means related by legitimate kinship: **Sec. 5(i)**

Provided that illegitimate children shall be deemed to be related to their mother and to one another and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly;

(viii) "son" includes an adopted son, whether adopted before or after the commencement of this Code, but does not include an illegitimate son. **Part II, sec. 2(c), page 3.**

(4)

4. Overriding effect of Code.—Save as otherwise expressly provided in this Code,—

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Code.

4. Overriding effect of Code.—Save as otherwise expressly provided in this Code, any text, rule or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respect any of the matters dealt with in this Code.

Part I, sec. 3, page 1.

(4)

(5)

PART II.—MARRIAGE AND ANNULMENT OF MARRIAGE

CHAPTER I

Marriage

5. Interpretation.—In this Part, unless the context otherwise requires,—

(a) "district court" includes any court subordinate to the district court which may be specified in this behalf by the State Government by notification in the Official Gazette;

(b) "Sapinda relationship"—a man is a *sapinda* of any of the persons mentioned in the first column of the First Division of the Third Schedule and a woman is a *sapinda* of any of the persons mentioned in the second column of the said Division;

(c) "degrees of prohibited relationship"—a man and any of the persons mentioned in the first column of the Second Division of the Third Schedule and a woman and any of the persons mentioned in the second column of the said Division are within the degrees of prohibited relationship.

Explanation.—For the purposes of clauses (b) and (c) relationship includes,—

(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly*.

* * * * * *

* * * * * *

PART II.—MARRIAGE AND DIVORCE

CHAPTER I

Marriage

5. Interpretation.—In this Part, unless there is anything repugnant in the subject or context,— **Part VI, sec. 1, page 14.**

(a)(i) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother and the fifth (inclusive) in the line of ascent through the father the line being traced upwards in each case from the person concerned, who is to be counted as the first generation:

(ii) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other with the limits of *sapinda* relationship or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them.

(b) "degrees of prohibited relationship".— two persons are said to be within "the degrees of prohibited relationship" if one is a lineal ascendant of the other or was the wife or husband of a lineal ascendant or descendant of the other or if the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers or two sisters.

Explanation.—For the purposes of clauses (a) and (b) relationship includes.—

(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

Illustrations

(i) C, the common ancestor is the father's mother's fathers's father of A and the mother's father of B. As C is the fifth generation from A in A's father's line and the third generation from B in B's mother's line, A and B are *Sapindas* of each other.

(ii) A and B are consanguine brother and sister. Their descendants within the limits of *sapinda* relationship, will be *sapindas* of each other. The descendants of their father and his *ancestors* will also be *sapindas* of A and B and their descendants within the limits of *sapinda* relationship. But the maternal grandfather of A will not necessarily be a *sapinda* of the maternal grandfather of B, nor will a son of the former maternal grandfather necessarily he a *sapinda* of a son of the latter.

(iii) A and B are *uterine* brother and sister. Their descendants, within the limits of *sapinda* relationship, will be *sapinda* of each other. The descendants of their mother and her ancestors will also be *spindas* of A and B and their descendants within the limits of *sapinda* relationship. But the paternal grandfather of A will not necessarily be a *sapinda* of the paternal grandfather of B, nor will a son of the former paternal grandfather necessarily be a *sapinda* of a son of the latter.

(6)

6. Forms of Hindu marriage.—Save as otherwise expresly provided herein, no marriage between Hindus shall be recognised as valid unless it is solemnized—

(a) as a *Dharmik* marriage, or

(b) as a civil marriage, or

(c) in accordance with the provisions of section 24A in cases to which that section applies.

(7)

General provisions for a Dharmik marriage

7. Essentials for a valid Dharmik marriage.—A Marriage between any two Hindus solemnized in the *Dharmik* form shall be a valid marriage, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

(ii) neither party is an idiot or a lunatic at the time of the marriage;

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship;

(v) the parties are not *sapindas* of each other unless the custom or usage governing each of them permits of a *Dharmik* marriage between the two;

(vi) where the bride has not completed her sixteenth year, the consent of her guardian in marriage has been obtained for the marriage.

(8)

General provisions for a Civil marriage

8. Essentials for a valid Civil marriage.—A Marriage between any two Hindus solemnized in the Civil form shall be a valid marriage, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

(ii) neither party is an idiot or a lunatic at the time of the marriage;

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship;

(v) each party has, if he or she has not completed the age of twenty one years at the time of the marriage, obtained the consent of his or her guardian in marriage:

Provided that no such consent shall be required if the bride is a widow.

6. Forms of Hindu marriage.—Save as otherwise expresly provided herein, no marriage between Hindus shall be recognised as valid unless it is solemnized either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part.

Part IV, sec. 1, page 15.

(6)

Sacramental marriage

7. Conditions relating to a sacramental marriage.—A marriage between any two Hindus may be solemnized in the sacremental form, if the following conditions are fulfilled, namely:—

Part IV, sec. 3, page 15.

(1) neither party has a spouse living at the time of the marriage;

(2) neither party is an idiot or lunatic at the time of the marriage;

(3) the bridegroom has completed the age of eighteen years and the bride the age of fourteen years at the time of the marriage;

(4) the parties are not within the degrees of prohibited relationship;

(5) the parties are not *sapindas* of each other unless the custom or usage governing each of them permits of a sacramental marriage between the two;

(6) where the bride has not completed her sixteenth year the consent of her guardian has been obtained for the marriage.

(7)

Part IV, sec, 7, page 16.

10. Conditions relating to a civil marriage.—For a civil marriage between any two Hindus, the following conditions must be fulfilled, namely:—

(1) neither party has a spouse living at the time of the marriage;

(2) neither party is an idiot or a lunatic at the time of the marriage;

(3) the bridegroom has completed the age of eighteen years and the bride the age of fourteen years at the time of the marriage;

(4) the parties are not within the degrees of prohibited relationship;

(5) each party has, if he or she has not completed the age of twenty one years, obtained the consent of his or her guardian in marriage:

Provided that no such consent shall be required in the case of a widow.

(8)

(9)

Formalities for a Dharmik marriage

9. Ceremonies.—(1) A *Dharmik* marriage shall not be complete and binding on the parties unless it is solemnized in accordance with such customary rites and ceremonies of either party thereto as are essential for such marriage.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire) the marriage becomes complete and binding when the seventh step is taken.

(3) Notwithstanding anything contained in this section, no marriage solemnized in the *Dharmik* form shall, after the solemnization thereof, be deemed to be invalid merely by reason of any irregularity in the performance of any of the customary rites and ceremonies of either party thereto.

(10)

10. Registration of Dharmik marriage.—(1) For the purpose of facilitating the proof of any *Dharmik* marriage the State Government may by rules, provide that—

(a) particulars relating to such marriage shall be entered in such manner and under such circumstances as it thinks fit in the Hindu *Dharmik* marriage Register kept for this purpose; and

(b) the making of such entries shall be compulsory in the State or in such areas or such cases as may be specified in the rules.

(2) In making any rules under sub-section (1) the State Government may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

(11)

Formalities for a Civil Marriage

11. Marriage Registrars.—The State Government may appoint one or more persons to be Registrars of Hindu Marriages, in this Part referred to as "the Registrar", for the State or any part thereof and the area for which any such Registrar has been appointed shall be called his district.

(12)

12. Notice of marriage to Registrar.—When a civil marriage is intended to be solemnized under this Part, the parties to the marriage shall give notice thereof in writing in the form specified in the Fourth Scheduled to the Registrar of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days preceding the date on which such notice is given.

8. Ceremonies required—(1) A sacramental marriage shall not be complete and binding on the parties unless it is solemnized in accordance with such customary rites and ceremonies of either party thereto as are essential for such marriage.

Part IV, sec. 4, page 15.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire) the marriage becomes complete and binding when the seventh step is taken.

(3) Notwithstanding anything contained in this section, no marriage solemnized in the sacramental form shall, after the solemnization thereof, be deemed to be invalid merely by reason of any irregularity in the performance of any of the customary rites and ceremonies of either party thereto.

(9)

9. Registration of Sacramental marriages.—(1) For the purpose of facilitating the proof of any *Sacramental* marriage the Provincial Government may by rules, provide that—

Part IV, sec. 6, page 15.

(a) particulars relating to such marriage shall be entered in the Hindu *Sacramental* marriage Register kept for this purpose in such manner and under such circumstances as it thinks fit; and

(b) the making of such entries shall be compulsory the such cases or in such areas as may be specified in the rules.

(2) In making any rules under sub-section (1) the Provincial Government may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

(10)

11. Marriage Registrars.—The Provincial Government may appoint one or more persons to be Registrars of Hindu Marriages, in this Part referred to as "the Registrar", for the Province or any part thereof and the area for which any such Registrar has been appointed shall be called his district.

Part IV, sec. 8, page 16.

(11)

12. Notice of marriage to Registrar.—When a civil marriage is intended to be solemnized under this Part, the parties to the marriage shall give notice thereof in writing in the form specified in the Third Scheduled to the Registrar of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days preceding the date on which such notice is given.

Part IV, sec. 9, page 16.

(12)

(13)

13. Marriage Notice Book and publication.—(1) The Registrar shall keep all notices given under section 12 with the records of his office and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the State Government to be called the "Hindu Civil Marriage Notice Book" and such book shall be open for inspection at all reasonable times, without fee by every person desirous of inspecting the same.

(2) The Registrar shall also publish every such notice in such manner as may be prescribed.

(14)

14. Objection to marriage.—(1) After the expiration of thirty days from the date on which notice of an intended marriage has been given under section 12, the marriage may be solemnized unless it has been objected to under sub-section (2).

(2) Any person may, before the expiration of thirty days from the giving of any notice of an intended marriage, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 8.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection and shall be signed by him or on his behalf.

(15)

15. Procedure on receipt of objection.—(1) If an objection is made under section 14 to an intended marriage, the Registrar shall not allow the marriage to be solemnized until the expiration of thirty days from the receipt of such objection, if there is a court of competent jurisdiction open at the time or if no such court is open at the time, until the expiration of thirty days from the opening of such a court.

(2) The person objecting to the intended marriage may file a suit in the district court having local jurisdiction, * * * for a declaration that such marriage contravenes one or more of the conditions specified in section 8 and the court in which such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been field.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection, if there is a court of competent jurisdiction open at the time or if no such court

13. Marriage Notice Book and publication.—(1) The Registrar shall keep all notices given under section 12 with the records of his office and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the Provincial Government to be called the "Hindu Civil Marriage Notice Book" and such book shall be open for inspection at all reasonable times, without fee by every person desirous of inspecting the same.

Part IV, sec. 10, page 10.

(2) The Registrar shall also publish every such notice in such manner as may be prescribed.

(13)

14. Objection to marriage.—(1) After the expiration of thirty days from the date on which notice of an intended marriage has been given under section 12, the marriage may be solemnized unless it has been objected to under sub-section (2).

Part IV, sec. 11, page 16.

(2) Any person may, before the expiration of thirty days from the giving of any notice of an intended marriage, object to the marriage on the ground that it would contravene one or more of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

(14)

15. Procedure on receipt of objection.—(1) If an objection is made under section 14 to an intended marriage, the Registrar shall not allow the marriage to be solemnized until the expiration of thirty days from the receipt of such objection, if there is a court of competent jurisdiction open at the time, or, if no such court is open at the time, until the expiration of thirty days from the opening of such a court.

Part IV, sec. 12, page 17.

(2) The person objecting to the intended marriage may file a suit in the District Court having local jurisdiction (or in any other Court empowered in this behalf by the Provincial Government and having such jurisdiction)* for a declaration that such marriage contravenes one or more of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10 and the court in which such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

**Dr. Ambedkar's remarks in his personal copy by blue pencil— 'omitted, unnecessary. See new definition of District Court.*—Ed.

is open at the time within thirty days from the opening of such a Court, the marriage shall not be solemnized until the decision of such court has been given and the period allowed by law for appeal from such decision has elapsed, or, if there is an appeal from such decision, until the decision of the appellate court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3), or if the decision of the court is that the marriage does not contravene any of the conditions specified in section 8, the marriage may be solemnized by the Registrar to whom the notice of marriage has been given.

(5) If the decision of the court is that the marriage contravenes any of the conditions specified in section 8, the marriage shall not be solemnized.

(16)

16. Power of court to fine when objection not reasonable.—If it appears to the court before which the suit is filed that the objection was not reasonable and *bona fide*, it may impose on the person objecting a fine not exceeding one thousand rupees and award it or any part thereof to the parties to the intended marriage.

(17)

17. Declaration by parties and witnesses.—(1) Before the marriage is solemnized, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form specified in the Fifth Schedule and where either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her guardian, except in the case of a widow.

(2) Every declaration made under sub-section (1) shall be countersigned by the Registrar.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection, if there is a court of competent jurisdiction open at the time or if no such court is open at the time within thirty days from the opening of such a Court, the marriage shall not be solemnized until the decision of such Court has been given and the period allowed by law for appeal from such decision has elapsed or if there is an appeal from such decision, until the decision of the appellate court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3), or if the decision of the court is that the marriage does not contravene any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10, the marriage may be solemnized by the Registrar to whom the notice of marriage has been given.

(5) If the decision of the court is that the marriage contravenes any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10, the marriage shall not be solemnized.

(15)

16. Power of court to fine when objection not reasonable.—If it appears to the court before which the suit is filed that the objection was not reasonable and *bonafide,* it may impose on the person objecting a fine not exceeding one thousand rupees and award it or any part thereof to the parties to the intended marriage.

Part IV, sec. 13, page 17.

(16)

17. Declaration by parties and witnesses.—(1) Before the marriage is solemnized, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form specified in the Fourth Schedule and where either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her guardian, except in the case of a widow.

Part IV, sec. 14, page 17.

(2) Every declaration made under sub-section (1) shall be countersigned by the Registrar.

(17)

(18)

18. Place and form of solemnization.—(1) The marriage may be solemnized,—

(a) at the office of the Registrar, or

(b) at such other place within reasonable distance therefrom as the parties may desire, upon such conditions and on the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Registrar and the three witnesses, I (A) take thee, (B), to be my lawful wife (or husband).

(3) The marriage shall be solemnized in the presence of the Registrar and the three witnesses.

(19)

19. Certificate of marriage—(1) When the marriage has been solemnized, the Registrar shall enter a certificate thereof, in the form specified in the Sixth Schedule in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriage Certificate Book" and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Hindu Civil Marriage Certificate Book by the Registrar, the certificate shall be deemed to be conclusive evidence of the fact that a civil marriage has been solemnized and that all formalities as respects the signatures of witnesses to the marriage have been complied with.*

(20)

20 When marriage not solemnized within three months after notice, new notice required.—Whenever a marriage is not solemnized within three calendar months after notice thereof has been given to the Registrar, as required by section 12 or where the person objecting to the intended marriage has filed a suit in a court of competent jurisdiction and the decision of such court has been given, within three calendar months of the date on which the period allowed by law for appeal from such decision expires, or if there is an appeal from such decision, within three calendar months from the date of decision of the appellate court, the notice and all other proceedings thereon shall be deemed to have lapsed and no Registrar shall allow the marriage to be solemnized until a new notice has been given in the manner prescribed in this Chapter.

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*(*Under this section 19 Dr. Ambedkar's remarks in pencil in his personal copy are as under, 'It is not enough to say that formalities have been gone through. It carries us nowhere, conclusive evidence must be of solemnization and not of formalities.*,'—Ed.)

18. Place and form of solemnization.—(1) The marriage may be solemnized,— **Part IV, sec. 15, page 17.**

(a) at the office of the Registrar, or

(b) at such other place within reasonable distance therefrom as the parties may desire, upon such conditions and on the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Registrar and the three witnesses, I (A) take thee, (B), to be my lawful wife (or husband).

(3) The marriage shall be solemnized in the presence of the Registrar and the three witnesses.

(18)

19. Certificate of marriage.—(1) When the. Marriage has been solemnized, the Registrar shall enter a certificate thereof, in the form specified in the Fifth Schedule in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriage Certificate Book" and such certificate shall be signed by the parties to the marriage and the three witnesses. **Part IV, sec. 17, page 18.**

(2) On a certificate being entered in the Hindu Civil Marriage Certificate Book by the Registrar, the certificate shall be deemed to be conclusive evidence of the fact that all formalities as respects the signatures of witnesses to a Civil marriage have been complied with.

(19)

20 When marriage not solemnized within three months after notice, new notice required.—Whenever a marriage is not solemnized within three calendar months after notice thereof has been given to the Registrar, as required by section 12 or where the person objecting to the intended marriage has filed a suit in a court of competent jurisdiction and the decision of such court has been given, within three calendar months of the date on which the period allowed by law for appeal from such decision expires, or if there is an appeal from such decision, within three calendar months from the date of decision of the appellate court, the notice and all other proceedings thereon shall be deemed to have lapsed and no Registrar shall allow the marriage to be solemnized until a new notice has been given in the manner prescribed in this Chapter. **(New)**

(20)

(21)

Registration of Dharmik marriages as civil marriages

21. Procedure for registration of certain Dharmik Marriages.—(1) Where any two Hindus have gone through a *Dharmik* form of marriage,—

(a) before the commencement of this Code, and doubts are entertained as respects the validity of any such marriage by reason of the provisions of any text, rule or interpretation of Hindu Law or any usage or custom in force at the time of the marriage, or

(b) after the commencement of this Code and such marriage is invalid by reason of the fact that it is in contravention of the provisions contained in clause (v) of section 7.

such persons may, at any time apply to the Registrar of the district in which either of them has resided for not less than thirty days immediately preceding the application to have their marriage registered as if it were a civil marriage solemnized before the Registrar.

(2) Upon receipt of any such application, the Registrar shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objections received within that period the Registrar, if he is satisfied—

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since;

(b) that the conditions specified in clauses (i), (ii), (iii) and (iv) of section 8 are satisfied as between the parties to the marriage on the date of the application; and

(c) that, where either party not being a widow at the time of the marriage has not on the date of the application completed the age of twenty one years, the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage.

shall enter a certificate of the marriage in the Hindu *Dharmik* Marriage Register in the form specified in the Seventh Schedule and such certificate shall be signed by the parties to the marriage as well as by three witnesses.

(3) Upon the entry of any such certificate as is specified in sub-section (2),the marriage shall be deemed to have been valid for all purposes and all children born after the date on which the parties went through the *Dharmik* form of marriage (whose names shall also be entered in the Certificate and the Hindu *Dharmik* Marriage Register) shall, in all respects, be deemed to be and always to have been the legitimate children of their parents.

(4) Any party to such marriage aggrieved by any order passed under this section may appeal against that order to the district court as defined in section 3 within the local limits of whose jurisdiction the Registrar exercises jurisdiction and the decision of the district court on such appeal shall be final.

21. Procedure for registration of certain Sacramental Marriages.—(1) Where any two Hindus have gone through a sacramental form of marriage,— **Part IV, sec. 18, page 18.**

(a) before the commencement of this Code and doubts are entertained as respects the validity of any such marriage by reason of the provisions of any text, rule or interpretation of Hindu Law or any usage or custom in force at the time of the marriage, or

(b) after the commencement of this Code and such marriage is invalid by reason of the fact that it is in contravention of the provisions contained in clause (5) of section 7.

such persons may, at any time apply to the Registrar of the district in which either of them has resided for not less than thirty days immediately preceding the application, to have their marriage registered as if it were a civil marriage solemnized before the Registrar.

(2) Upon receipt of any such application, the Registrar shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objections received within that period the Registrar, if he is satisfied—

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since;

(b) that the conditions in clauses (1) to (4) of section 10 are satisfied as between the parties to the marriage on the date of the application; and

(c) that, where either party not being a widow at the time of the marriage has not on the date of the application completed the age of twenty one years, the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage;

shall enter a certificate of the marriage in the Hindu Sacramental Marriage Register in the form specified in the Sixth Schedule and such certificate shall be signed by the parties to the marriage as well as by three witnesses.

(3) Upon the entry of any such certificate as is specified in sub-section (2) the marriage shall be deemed to have been valid for all purposes and all children born after the date on which the parties went through the Sacramental form of marriage (whose names shall also be entered in the Certificate and the Hindu Sacramental Marriage Register) shall, in all respects, be deemed to be, and always to have been, the legitimate children of their parents.

(4) Any party to such marriage aggrieved by any order passed under this section may appeal against that order to the district court within the local limits of whose jurisdiction the Registrar exercises jurisdiction, and the decision of the district court on such appeal shall be final.

(22)

Use of marriage records

22. Marriage records to be open to inspection etc.—The Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

Certified extracts therefrom shall, on application be given by the Registrar on payment to him of the prescribed fee.

(23)

23. Transmission of copies of entries in marriage records to the Registrar General of Births, Deaths and Marriages.—The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the State within which his district is situate at such intervals as may be prescribed, a true copy in the prescribed form and certified by him of all entries made by him in the Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book since the last of such intervals.

Part IV, sec. 19, page 18.

22. Marriage records to be open to inspection etc.—The Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

Certified extracts therefrom shall, on application be given by the Registrar on payment to him of the prescribed fee.

(22)

23. Transmission of copies of entries in marriage records to the Registrar General of Births, Deaths and Marriages.—The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the Province within which his district is situate, at such intervals as may be prescribed, a true copy in the prescribed form and certified by him of all entries made by him in the Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book since the last of such intervals.

(23)

(24)

Guardianship in marriage

24. Priority among guardians in marriage.—(1) Subject to the provisions of Part IV, wherever the consent of a guardian in marriage is necessary under this Part the persons entitled to give such consent shall be the following in the order specified hereunder, namely,—

(1) the father,

(2) the mother,

(3) the brother,

* * * * * * *

* * * * * * *

(4) any other relative, the nearer being preferred to the more remote.

* * * * * * *

Explanation.—In determining which of the two relatives is nearer for the purposes of entry (4) above, the test shall be, which of them is first entitled to inherit to the ward's heritable properly according to the rules of intestate succession in Part VII.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty first year.

(3) Whether any person entitled to be the guardian in marriage under the foregoing provisions refuses or is by reason of absence, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian in marriage.

(4) Nothing in this Part shall affect the jurisdiction of a court to prohibit by injunction and intended marriage arranged by the guardian in marriage, if in the interests of the minor, the court thinks it necessary to do so.

Part IV sec. 22, page 19.

24. Guardianship in marriage.—(1) Subject to the provisions of Part IV, wherever the consent of a guardian in marriage is necessary under this Part the persons entitled to give such consent shall be the following in the order specified hereunder, namely,—

(1) the father;

(2) the mother,

(3) the paternal grandfather.

(4) The brother by full or half blood, a brother by full blood being preferred to one by half blood and as between brothers both by full or half blood, the elder being preferred;

(5) the paternal uncle by full or half blood, subject to the like rules of preference as are set out in entry (4) above;

(6) the maternal grandfather;

(7) the maternal uncle, subject to the like rules of preference as are set out in entry (4) above.

(8) any other relative, the nearer being preferred to the more remote and as between relatives related in the same way, subject to the like rules of preference as are set out in entry (4) above.

Explanation.—In determining which of the two relatives is nearer for the purposes of entry (8) above the test shall be, which of them is first entided to inherit to the ward's heritable property according to the rules of intestate succession in Part VII.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

(3) Where any person entitled to be me guardian in marriage under the foregoing provisions refuses or is by reason of absence, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) Nothing in this Part shall affect the jurisdiction of a court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor, the court thinks it necessary to do so.

(25)

Special provisions for a valid marriage between Marumakkattayees, etc.

24A. Conditions relating to marriage of Marumakkattayam or Aliyasantana female.—(1) A marriage solemnized after the commencement of this Code between a female who, if this Code had not been passed, would have been governed by the Marumakkattayam or Aliyasantana law and a male Hindu, shall be a valid marriage if the conditions specified in section 7 are fulfilled;

Provided that the condition specified in clause (v)* of the said section shall not apply to any such marriage.

(2) Every marriage under this section shall be openly solemnized in accordance with the customary rites and ceremonies, if any, prevailing in the community to which the parties belong or either of them belongs;

Provided that no such marriage shall be deemed to be invalid merely by reason of any irregularity in the performance of any of the rites and ceremonies aforesaid.

(3) Notice of every marriage under this section shall be given by such person to such authority in such form and within such time as may be prescribed.

(4) Where a marriage is solemnized under the provisions of this section between a female who, if this Code had not been passed, would have been governed by the Marumakkattayam or Aliyasantana law, and a male Hindu who would not have been governed by such law, it shall be lawful for the parties to make a declaration in the notice given under sub-section (3) that they desire to be governed by the special provisions contained in this Part with respect to annulment of Marumakkattayam or Aliyasantana marriages, and unless any such declaration is made,—

(a) nothing contained in any such special provision (except this section) shall apply to either of the parties; and

(b) Chapters II and III of this Part shall apply to, or in relation to, such marriage as they apply to, or in relation to, a *Dharmik marriage.*

(5) If any person fails to give notice of a marriage as required by sub-section (3), he shall be punishable with fine, which may extend to fifty rupees;

Provided that the failure to give any such notice shall not invalidate the marriage or affect the legal rights of the parties to, or of the issue of, such marriage.

(26)

Penalties, etc.

***25. Bigamous marriage and punishment therefor.**—Any person who during the lifetime of his or her spouse, if the marriage of such person with such spouse has not been annulled in accordance with the provisions of this Code, or, at any time before the commencement of this Code, in accordance with the law, custom or usage in force at the time, contracts any other marriage after the commencement of this Code, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code (Act XLV of 1860) for the offence of marrying again during the lifetime of a husband or wife.

(27)

26. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required under this Part, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be * * * * guilty of the offence described in section 199 of the Indian Penal Code (Act XLV of 1860).

* * * * *

* *Dr. Ambedkar's note in pencil on his personal copy, 'Recognises custom also to make matter clear'*—Ed.

25. Bigamous marriage and punishment therefor.— Any person who during the lifetime of his or her spouse, if the marriage of such person with such spouse has not been dissolved by a Court of competent jurisdiction, contracts any other marriage after the commencement of this Code, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code 1860 (XLV of 1860) for the offence of marrying again during the lifetime of a husband or wife.

Part V, sec. 24, page 19.

(26)

26. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required under this Part, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to be guilty of the offence described in section 199 of the Indian Penal Code 1860 (XLV of 1860).

Part IV sec. 22, page 18.

(27)

(27)

CHAPTER II

Restitution of conjugal rights and judicial separation

27. Petition for restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(29)

28. Answer to petition for restitution of conjugal rights.—Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be a ground for judicial separation or for a decree of annulment of marriage.

(29)

29. Judicial separation.—Either party to a marriage, whether solemnized before or after the commencement of this Code, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party—

(a) has deserted the petitioner without cause for a period of not less than two years immediately preceding the presentation of the petition;

(b) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(c) has, for a period of not less than one year immediately preceding the resentation of the petition, been suffering from venereal disease in a communicable form and not contracted from the petitioner;

(d) is suffering from a virulent form of leprosy; or

(e) has been habitually of unsound mind since the date of the marriage; or

(f) has committed adultery during the marriage.

Explanation.—In this section, the expression "to desert" with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent or against the wish of such party.

31. Petition for restitution of conjugal rights.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. **(New)**

(28)

32. Answer to petition for restitution of conjugal rights.—Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be a ground for judicial separation or for a decree of dissolution of marriage. **(New)**

(29)

Judicial Separation

33. Judicial separation.—Either party to a marriage, whether solemnized before or alter the commencement of this Code, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party— **Part IV, sec. 30, page 21.**

(a) has deserted the petitioner for a period of not less than two years; or

(b) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(c) has been suffering from incurable venereal disease in a communicable form, not contracted from the petitioner for a period of not less than one year immediately preceding the presentation of the petition; or

(d) is suffering from a virulent form of leprosy; or

(e) has been habitually of unsound mind since the date of marriage; or

(f) has committed adultery during the marriage.

Explanation.—In this section, the expression "to desert" with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent or against the wish of such party.

(30)

(31)

CHAPTER III

General provisions relating to annulment of marriage

30. No marriage to be annulled except by order of court.—Notwithstanding anything contained in this Part, no marriage solemnized, whether before or after the commencement of this Code, shall be deemed to have been lawfully annulled except by a decree of a competent court passed in that behalf.

(32)

30A. Modes of annulment of marriage.—A marriage may be annulled by a decree of nullity, if it is void for any of the reasons set out in section 31, or by a decree of dissolution, if it is voidable for any of the reasons set out in section 32, or by a decree of divorce for any of the reasons set out in section 33, as the case may be.

Nullity of Marriages

31. Grounds for a decree of nullity.—(1) Any marriage solemnized before the commencement of this Code may be annulled by a decree of nullity—

(a) if by reason of the provisions of any law in force at the time of the marriage such marriage was invalid on the ground that either party had a spouse living at the time of the marriage or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (c) of section 5 :

Provided that no such marriage shall be annulled under the provisions of clause (b) of this sub-section if it was valid under the provisions of any law in force at the time of the marriage.

(2) Any marriage solemnized after the commencement of this Code may be annulled by a decree of nullity—

(a) if, purporting to be a *Dharmik* marriage, it contravenes any of the conditions specified in clauses (i), (iv) and (v) of section 7.

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (i) and (iv) of section 8:

Provided that nothing contained in this section shall apply to any case falling within the prohibition contained in clause (v) of section 7, if, before the institution of any proceeding for the annulment of marriage, the marriage is registered as a civil marriage under section 21.

34. No marriage to be avoided except by order of court.— Notwithstanding anything contained in this Part, no marriage solemnized, whether before or after the commencement of this Code, and whether such marriage is void or voidable, shall be deemed to have been lawfully dissolved unless a decree has been pronounced by a Competent Court declaring that the marriage is dissolved either on a petition for dissolution or in any other proceeding in which the validity of the marriage is in issue.

(31)

(32)

28. Void marriage.—(1) Any marriage solemnized before the commencement of this Code shall be void— **Part IV, sec. 29(2)(ii) page 2.**

(a) if by reason of the provisions of any law in force at the time of the marriage such marriage was invalid on the ground that either party had a spouse living at the time of the marriage; or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (b) of section 5;

Provided that no such marriage shall be deemed to be void under the provisions of clause (b) of sub-section (1) if it was valid under the provisions of any law in force at the time of the marriage.

(2) Any marriage solemnized after the commencement of this Code shall be void—

(a) if, purporting to be a sacramental marriage, it contravenes one or more of the conditions specified in clauses (1), (4) and (5) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (1) and (4) of section 10:

Provided that in the case mentioned in clause (a) of sub-section (2) the condition specified in clause (5) of section 7 shall not apply when the marriage is subsequently registered at any time as a civil marriage under section 21, before any petition for dissolution is presented to any Court.

(33)

(34)

Dissolution of Marriage

32. Grounds for a decree of dissolution.—(1) Any marriage solemnized before the commencement of this Code may be annulled by a decree of dissolution on the ground that either party to the marriage was an idiot or a lunatic at the time of the marriage.

(2) Any marriage solemnized after the commencement of this Code may be annulled by a decree of dissolution—

(a) if, purporting to be a *Dharmik* marriage, it contravenes any of the conditions specified in clauses (ii), (iii) and (vi) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (ii), (iii) and (v) of section 8:

Provided that, unless there was force or fraud, a *Dharmik* marriage shall not, after it has been completed, be deemed to be invalid or even to have been invalid merely on the ground that the consent of the bride's guardian in marriage to the marriage was not or had not been obtained.

* * * * * *

29. Voidable marriages.—(1) Any marriage solemnized before the commencement of this Code shall be voidable if either party to the marriage was an idiot or lunatic at the time of the marriage. **Part IV, sec. 5, page 15.**

(2) Any marriage solemnized after the commencement of this Code shall be voidable—

(a) if, purporting to be sacramental marriage, it contravenes any of the conditions specified in clauses (2), (3) and (6) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (2), (3) and (5) of section 10:

Provided that unless there was force or fraud, a sacramental marriage shall not, after it has been completed, be deemed to be invalid or ever to have been invalid merely on the ground that the consent of the bride's guardian to the marriage was not or had not been obtained.

(3) Any marriage, whether solemnized before or after the commencement of this Code, shall be voidable on any of the grounds specified in section 30.

(4) Where a period of limitation is prescribed for the presentation of any petition under this Part and no petition is presented within the time prescribed, the marriage shall be deemed to be valid and always to have been valid for all purposes.

36. Dissolution of marriage.—(1) Subject to the provisions of section 35, either party to a marriage may at any time present a petition for dissolution of marriage to the District Court on any of the grounds which makes a marriage void or voidable.

(2) Nothing in sub-section (1) shall be deemed to authorise a Court to pass a decree—

(i) in the case of marriage solemnized before the commencement of this Code which was valid at the time of solemnization, on the ground—

(a) that a former wife of the male party was living at the time of the marriage; or

(b) that the parties are within the degrees of prohibited relationship as defined by clause (b) of section 5;

(ii) in the case of a voidable marriage, whether solemnized before or alter the commencement of this Code, on the ground that either party was an idiot or lunatic at the time of the marriage or that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding, unless the petition for dissolution is

(35)

Divorce

33. Grounds for a decree of divorce.—Any marriage, solemnized whether before or after the commencement of this Code, may be annulled by a decree of divorce on any of the following grounds namely:—

(i) either party to the marriage was impotent at the time of the marriage and continued to be so until the institution of the proceeding;

(ii) the husband is keeping a * * * concubine or the wife has become the concubine of any other man or leads the life of a prostitute;

(iii) either party to the marriage has ceased to be a Hindu by conversion to another religion;

(iv) either party is incurably of unsound mind and has been continuously under treatment for a period of not less than five years preceding the petition; and

(v) either party is suffering from a virulent * * * form of leprosy..

(vi) either party has not resumed marital intercourse for a period of two years or upwards after a decree or order for judicial separation had been passed against the other party;

(vii) either party has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards.

presented within three years after the solemnization of the marriage, or in the ease of a marriage solemnized before the commencement of this Code, within two years of such commencement; or

(iii) in the case of a voidable marriage, whether solemnized before or after the commencement of this Code, on the ground that the consent of the petitioner or where the consent of his or her guardian is requisite, the consent of such guardian was obtained by force or fraud, unless the petition for dissolution is presented within one year alter the force had ceased to operate or the fraud had been discovered:

Provided that the Court shall dismiss such petition if—

(a) in the case of a voidable marriage solemnized before the commencement of this Code the force had ceased to operate or the fraud had been discovered before such commencement and the petition for dissolution is presented more than one year after the commencement of this Code; or

(b) the petitioner has, with his or her free consent, lived with the other party to the marriage as husband and wife after the force had ceased to operate or the fraud had been discovered, as the case may be.

(34)

Part IV sect's 29 & 30, page 2.

30. Other grounds for dissolution of marriage.— A marriage, whether solemnized before or after the commence ment of this Code, may be dissolved on any of the following grounds, namely, that—

(i) either party to the marriage was impotent at the time of the marriage and continued to be so until the institution of the proceeding;

(ii) the husband is keeping a woman as a concubine or the wife has become the concubine of any other man or leads the life of a prostitute;

(iii) either party to the marriage has ceased to be a Hindu by conversion to another religion;

(iv) either party is incurably of unsound mind and has been continuously under treatment for a period of not less than five years preceding the petition; and

(v) either party is suffering from a virulent and incurable form of leprosy.

(New)

38 Further grounds for dissolution.—Either party to a marriage whether solemnized before or after the commencement of this Code, may present a petition to the District Court prayin'g that his or her marriage may be dissolved on the ground that the other party—

(a) has not resumed marital intercourse for a period of two years or upwards after a decree or order for judicial separation had been passed against the respondent; or

(b) that the respondent has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards.

(35)

(36)

34. Right to have marriage annulled.—(1) A decree of nullity of marriage may be obtained either by a party to the marriage or by a Proctor or by any person affected by, or having an interest in, the marriage either on a petition for annulment by a decree of nullity or on a plea raised in any other proceeding.

(2) A petition for a decree of dissolution or for divorce shall lie only at the instance of a party to the marriage:

Provided that no party shall be entitled to take advantage of his or her own default or disability for the purpose of relief.

(37)

35. Appointment of Proctors.—(1) The State Government may appoint one or more Proctors for the State or any part thereof who shall have the right—

(i) to appear or intervene either *suo moto* in any proceeding for the annulment of any marriage, where in the opinion of the Proctor it is expedient in the public interest so to do or at the instance of any court;

(ii) to initiate any proceeding for the annulment of any marriage where the appropriate remedy for annulment is by a decree of nullity.

(2) The State Government may make rules regulating the manner in which the right of the Proctor shall be exercised and all matter incidental to or consequential on any exercise of the right.

35. Persons entitled to present petition for dissolution.—(1) Where a marriage, whether solemnized before or after the commencement of this Code, is impugned on the ground that it is a void marriage, the plea may be entertained by the Court either—

(i) on a petition for dissolution presented by either party to the marriage; or

(ii) on an issue being raised in any proceeding by any person affected by or having an interest in the marriage.

(2) Where a marriage, whether solemnized before or after the commencement of this Code, is impugned on the ground that it is a voidable marriage, no such plea shall be entertained by the Court except at the instance of either party to the marriage:

Provided that no party shall be entitled to take advantage of his or her own default or disability for the purpose of relief.

(38)

36. No petition for divorce to be presented within three years of marriage.—(1) notwithstanding anything contained in this Part, it shall not be competent for any court to entertain any petition for a decree for divorce, unless at the date of the presentation of the petition three years have elapsed since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before three years have elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of tliree years from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petilion for divorce before the expiration of tliree years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(39)

Effect of annulment of marriage

37. Liberty to parties to marry again.—When a marriage has been annulled by a decree of a competent court and no appeal has been presented against such decree or when any such appeal has been dismissed, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been annulled by death.

(38)

50. Liberty to parties to marry again.—When six months after the date of an order of a High Court confirming the decree for dissolution of marriage made by a District Judge have expired, **(New)**

or when six months after the date of any decree of a High Court dissolving a marriage have expired and no appeal has been presented against such decree,

or when any such appeal has been dismissed or when as a result of such appeal any marriage is dissolved, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

(39)

(40)

38. Consequences of annulment of marriage.—(1) Where a marriage is annulled by a decree of nullity, * * * the parties thereto shall be deemed never to have been married, nor to have been related to each other as husband and wife:

Provided that where a marriage is annulled by a decree of nullity on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnized in good faith and that one or both of the parties fully believed that the former husband or wife was dead, children begotten before the decree is passed shall be specified in the decree and shall in all respects to be deemed to be, and always to have been, the legitimate children of their parents.

(2) Where a marriage is annulled by a decree of dissolution or a decree of divorce, the parties shall cease to be related to each other as husband and wife from the date of the decree, and any children begotten of the marriage shall in all respects be deemed to be, and always to have been, the legitimate children of their parents and their names shall be specified in the decree.

(41)

Jurisdiction and procedure

39. Extent of power to grant relief under this Part.—Nothing contained in this Part shall authorise any Court.—

(a) to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition.

(b) to make decrees of dissolution or divorce, except where the parties to the marriage are domiciled in India at the time of presenting the petition; or

(c) to grant any relief under this Part other than a decree of nullity of marriage or a decree of dissolution or divorce, except where the petitioner resides in India at the time of presenting the petition.

37. Effect of declaring marriage *null and void.*—(1) Where a marriage is dissolved on the ground that it is a void marriage, or where a marriage has been declared to be void, void marriage shall be deemed to have been void *ab initio,* and any children begotten of the marriage shall be deemed to be, and always to have been, illegitimate:

Provided that where a marriage is dissolved or declared to be void on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnized in good faith and that one or both of the parties fully believed that the former husband or wife was dead, children begotten before the decree is made shall be specified in the decree and shall in all respects be deemed to be, and always to have been, the legitimate children of their parents.

(2) Where a marriage is dissolved on any of the grounds specified in sections 29 and 30, any children begotten of the marriage shall in all respects be deemed to be, and always to have been, the legitimate children of their parents and their names shall be specified in the decree.

Part IV, sec. 29(I), page 21.

(40)

Jurisdiction and procedure

39. Extent of power to grant relief under this Part.—Nothing contained in this Part shall authorise any Court.—

(a) to make decrees for dissolution of marriage—

(i) in the case of a void marriage or in the case of a voidable marriage which contravenes the provisions of clause (2) of section 7 or clause (2) of section 10 or which can be avoided on the ground that either party to the marriage was important at the time of the marriage and continued to be so until the institution of the proceeding, unless the marriage has been solemnized in a Province and the petitioner is resident in the Province at the time of presenting the petition ; or

(New)

(ii) in the case of a voidable marriage, not falling within sub-clause (i) of clause (a) of this section, unless the parties to the marriage are domiciled in a Province at the time when the petition for dissolution is presented; or

(b) to grant any relief under this Part, other than a decree for dissolution of marriage except where the petitioner resides in a Province at the time of presenting the petition.

(41)

(42)

40. Court to which petittion should be made and hearing *in camera.*— *(1)* Every petition under this Part shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.

(2) A proceeding under this Part shall be conducted *in camera* If either party so desires or if the Court thinks ill to do so.

(43)

41. Contents and verification of petitions.—(1) Every petition presented under this Part shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded and every petition for the annulment of any marriage or for judicial separation shall state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Part shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

(44)

42. Application of the Code of Civil Procedure.—Subject to the other provisions contained in this Part, all proceedings under 'this Part between party and party shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).

(45)

43. Decree in proceeding.—In any petition presented under this Part, whether defended or not, if the court is satisfied that any of the grounds for granting relief exists and that the petition has not been presented or prosecuted in collusion with the respondent or that the adultery complained of, if any, has not been connived at or condoned, the court shall decree such relief accordingly.

40. Court to which petition should be made.— Every petition under this Part shall be presented to the District Court Act within the local limits of whose ordinary original civil jusidiction the husband and wife reside or last resided together.

Sec. 3(2), Ind. Div. Act.

48. Suits may be heard within Closed doors.—A proceeding under this part shall be conducted *in camera* at the instance of either party or if the Court thinks fit to do so.

(42)

41. Contents and verification of petitions.—(1) Every petition presented under this Part shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded and every petition for a decree of dissolution of marriage, or of judicial separation shall state that there is no collusion between the petitioner and the other party to the marriage.

Sec. 10, Ind. Div. Act.

(2) The statements contained in every petition under this Part shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

(43)

42. Application of the Code of Civil Procedure.— Subject to the other provisions contained in this Part, all proceedings under this Part between party and party shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (V of 1908).

S. 15, Ind. Div. Act.

(44)

43. Decree in proceeding.—In any petition presented under this Part, whether defended or not, if the court is satisfied that any of the grounds for granting relief exists and that the petition has not been presented or prosecuted in collusion with the respondent or that the adultery complained of, if any, has not been connived at or condoned, the court shall decree such relief accordingly.

(45)

(46)

Other orders that may he passed in annulment proceeding

44. Alimony, *pendente lite.*—Where in any proceeding under this Part, it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and monthly during the proceeding such sum not exceeding one-fifth of her husband's net income as to the court seems reasonable.

(47)

45. Permanent alimony.—(1) Any court exercising jurisdiction under this Part may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, a charge on the husband's property of such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the wife in whose favour an order has been made under sub-section (1) or (2) has remarried or has not remained chaste, it shall * * rescind the order.

(48)

46. Custody of children.—In any proceeding under this Part, the Court may, from time to time, pass such *interim* orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or *interim* orders in case the proceeding for obtaining such decree were still pending.

45. Alimony, *pendente lite.*—Where in any proceeding under this Part, it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and monthly during the proceeding such sum not exceeding one fifth of her husband's net income as to the court seems reasonable. **Sec. 6, Bombay Act**

(46)

46. Permanent alimony.—(1) Any court exercising jurisdiction under this Part may, at the time of passing Act any decree or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, a charge on the husband's property of such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own properly, if any, her husband's property and the conduct of the parties, shall be deemed just. **Sec. 6, Bombay Act**

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the wife in whose favour an order has been made under sub-section (1) or (2) has remarried or has not remained chaste, it shall vary or rescind the order.

(47)

47. Custody of children.—In any proceeding under this Part, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently wilh their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions wilh respect to the custody, maintenance and education of such children as might have been made by such decree or *interim* orders in case the proceeding for obtaining such decree were still pending. **Sec. 15, Bombay Act.**

(48)

(49)

47. Disposal of property.—Any court exercising jurisdiction under this Part may at the time of passing any decree make such provisions in the decree as it may deem just and proper as respects—

(i) any property which belonged jointly to the husband and the wife immediately before the decree;

(ii) any property which belongs to the wife, whether by way of dowry as defined in section 93 or otherwise, and which is in the possession of the husband.

(50)

Execution of, and appeals from, decrees and orders

48. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by the court in any proceeding under this Part shall be enforcced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the law for the lime being in force:

* * * * * *

Provided that there shall be no appeal on the subject of costs only.

(49)

49. Enforcement of and appeal from orders and decrees.—All decrees and orders made by the court in any proceeding under this Part shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the law for the time being in force: (new)

Provided that—

(a) there shall be no appeal from a decree of a District (New) Court for dissolution of marriage or from the order of the High Court confirming or refusing to confirm any such decree; (New)

(b) there shall be no appeal on the subject of costs only.

(50)

(51)

CHAPTER IV

Special provisions for annulment of Marumakkattayam or Aliyasantana marriage

49. Annulment of Marumakkattayam or Aliyasantana marriage.—(1) Save as provided in sub-section (4) of section 24A, a marriage solemnized under that section may be annulled—

(a) by a decree of nullity under section 49A;

(b) by an order of divorce under section 49B;

(c) by a registered instrument of dissolution executed by the parties to the marriage:

Provided that, if the female party to the marriage has not completed the age of eighteen years, no marriage shall be annulled by an order of divorce before she completes that age.

(2) The annulment of a marriage by a registered instrument of dissolution shall take effect from the date of the registration of the instrument.

(52)

49A. Grounds for a decree of nullity of Marumakkattayam or Aliyasantana marriage.—(1) Any marriage solemnized before the commencement of this Code under the Marumakkattayam or Aliyasantana law may be annulled by a decree of nullity,—

(a) if by reason of the provisions of any law in force at the time of the marriage, such marriage was invalid on the ground that either party had a spouse living at the time of the marriage; or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (c) of section 5 :

Provided that no marriage so solemnized shall be annulled under the provisions of clause (b) of this sub-section, if it was valid under the provisions of any law in force at the time of the marriage.

(2) Save as provided in sub-section (4) of section 24A, a marriage solemnized under that section, may be annulled by a decree of nullity if it contravenes the condition specified in clause (i) or clause (iv) of section 7.

(3) Where a marriage is annulled by a decree of nullity under this section, the parties thereto shall be deemed never to have been married, nor to have been related to each other as husband and wife:

Provided that where a marriage is annulled by a decree of nullity on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnized in good faith and that one or both of the parties fully believed that the former husband or wife was dead, children begotten before the decree is passed shall be specified in the decree and shall in all respects be deemed to be and always to have been the legitimate children of their parents.

(51)

(52)

(53)

49B. Petition and procedure for divorce in respect of Marumakkattayam or Aliyasantana marriage.—(1) Save as provided in sub-section (4) of section 24A, any party to a marriage under that section may present a petition to the district court for the annulment of such marriage by an order of divorce.

(2) The petition shall specify the place where, the date on which, and the name and address of the guardian, if any, with whose consent, the marriage was solemnized.

(3) A copy of such petition shall be served on the respondent at the cost of the petitioner.

(4) On the motion of the petitioner, made not earlier than six months and not later than one year after the date of the service of the copy of the petition aforesaid, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after such enquiry as it thinks fit that a marriage which is valid under section 24A was solemnized between the parties and that such marriage complied with both the conditions specified in clauses (i) and (iv) of section 7, by order in writing declare the marriage annulled.

(5) The annulment of the marriage shall take effect from the date of the order, and either party to the marriage shall then be at liberty to marry again subject to the provisions of this Part.

(6) Where a marriage is annulled by an order of divorce under this section, the parties shall cease to be related to each other as husband and wife from the date of the order, and any children begotten of the marriage shall in all respects be deemed to be and always to have been the legitimate children of their parents.

(54)

50. Application of certain provisions to Marumakkattayam or Aliyasantana marriage.—(1) The provisions of sections 39 to 48 inclusive shall apply, as far as may be, to proceedings for the annulment under this Chapter, whether by a decree of nullity or by an order of dissolution, of any marriage solemnized under section 24A.

(2) Nothing contained in this section shall affect the operation of subsection (4) of section 24A, and save as provided in sub-section (1), nothing contained in Chapter II or Chapter III shall apply to, or in relation to, any marriage solemnized under that section.

(54)

(55)

CHAPTER V

Savings

51. Saving of prior marriages and special provisions therefor.—(1) A *marriage solemnized between Hindus before the commencement of this Code,* which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different castes or sub-divisions of the same caste.

(2) A marriage which was solemnized before the commencement of this Code between a female who was governed by the Marumakkattayam or Aliyasantana law at the time of the marriage and a male Hindu and which is valid and subsisting at the commencement of this Code shall continue to be a valid marriage, and the special provisions contained in this Code with respect to annulment of Marumakkaltayam or Aliyasantana marriages shall apply to, or in relation to, such marriage in like manner as they apply to, or in relation to, a marriage between persons both of whom are governed by that law.

(3) A conjugal union of a female belonging to any of the communities specified in clause (b) of the definition of "Marumakkattayam law" in section 3 with a male Hindu, whether governed by that law or not, which was openly solemnized before the commencement of this Code with the customary ceremonies prevailing in the community to which the parties belong or either of them belongs shall be deemed for all purposes [including sub-section (2)] to be and always to have been a valid marriage if the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong or either of them belongs:

Provided that nothing contained in this sub-section shall be deemed to invalidate any dissolution of the marriage effected before the commencement of this Code in accordance with the custom prevailing in the community to which the parties belong or either of them belongs.

51A. Dissolution before or after Code of certain valid marriages not to effect rights of children.—Where a marriage solemnized before the commencement of this Code between a female governed by the Marumakkattayam or Aliyasantana law at the time and a male Hindu is a valid marriage by reason of any law, whether in force at the time of the marriage or passed subsequently, or by reason of sub-section (3) of section 51, the dissolution of the marriage, whether by death or otherwise and whether before or after the commencement of this Code, shall not affect in any way the legal

status or rights under this Code of the children of such marriage or of their descendants.

Part IV, sec. 3, page 15 (Explanation.)

27. Saving of prior marriages.—A marriage solemnized between Hindus before the commencement of this Code, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid, by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different castes or sub-divisions of the same caste.

Part IV, sec. 34, page 22, sec. 17, Bombay Act.

51. Savings.—(1) Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1932) to obtain the dissolution of a sacramental marriage, whether solemnized before or after the commencement of this Code.

(2) Nothing contained in this Part shall affect any proceeding under any other law for the time being in force for dissolution of marriage or for nullity of marriage or for judicial separation pending at the dale of the commencement of this Code, and any such proceeding may be continued and determined as if this

Code had not been passed.

(55)

51B. Saving of pending proceedings.—Nothing contained in this Part shall affect any proceeding under any other law for the time being in force

for the annulment of any marriage or for judicial separation pending at the date of the commencement of this Code, and any such proceeding may be continued and determined as if this Code had not been passed.

(56)

PART III-ADOPTION

CHAPTER I

Adoption generally

52. Prohibition of adoption in contravention of this Part.—(1) No adoption shall be made after the commencement of this Code by or to a male Hindu except in accordance with the provisions contained in this Part.

(2) Except in the cases referred to in sub-section (2) of section 66, any adoption made in contravention of this Part shall be void.

(3) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption nor destroy the rights of any person in the family of birth.

(57)

53. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption;

(iv) the adoption is completed by a physical giving and taking; and

(v) the adoption complies with the other conditions mentioned in this Part.

(58)

Capacity to take in adoption

54. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption;

Provided that a Hindu who has a wife living shall not adopt except with the consent of his wife or, if he has more than one wife, except with the consent of at least one of such wives, unless the wife or all

the wives, as the case may be, is or are incapable of giving consent.

Explanation.—For the purposes of this section, a wife shall be deemed to be incapable of giving consent if she is of unsound mind or has not attained the age of eighteen years.

Part VI, secs. 1, 17, and 27, pages 24, 27 and 28.

PART III-ADOPTION

CHAPTER I

Adoption generally

52. Prohibition of adoption in contravention of this Part.—(1) No adoption shall be made after the commencement of this Code by or to a male Hindu except in accordance with the provisions contained in this Part.

(2) Except in the case referred to in sub-section (2) of section 66, any adoption made in contravention of the provisions of this Part shall be void.

(3) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption nor destroy the rights of any person in the family of birth.

Part VI, sec. 4, page 24

53. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption;

(iv) the adoption is completed by a physical giving and taking; and

(v) the adoption complies with the other conditions mentioned in this Part.

Part VI, sec. 5(1), page 24

Capacity to take in adoption

54. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption:

Provided that a Hindu shall not adopt except with the consent of his wife or, if he has more than one wife, except with the consent of at least one of such wives, unless the wife or all the wives, as the case may be, is or are incapable of giving consent.

Explanation.—For the purposes of this section, a wife shall be deemed to be incapable of giving consent if she is of unsound mind or has not attained the age of eighteen years.

(58)

(59)

55. Capacity of widow to take in adoption.—(1) Any Hindu widow who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption to her husband.

Provided that—

(a) her husband has not * * * * prohibited her from adopting, and

(b) her power to adopt has not terminated.

(2) Nothing in sub-section (1) shall be deemed to prevent a Hindu widow who has not completed the age of eighteen years from adopting a boy named by her husband in any authority conferred on her in the manner hereinafter provided.

(60)

56. Authority or prohibition in regard to adoption.—(1) Any male Hindu who has the capacity to take a son in adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing so.

(2) Where there are more wives than one, the authority may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, has expressly authorised any one or more of them to adopt a son, he shall be deemed to have prohibited the others from adopting.

(61)

57. Manner of giving authority or imposing prohibition or revoking the same.—(1) No authority to adopt, and no prohibition of adoption, shall be valid unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(2) Any authority or prohibition so given or imposed may be revoked

either by an instrument registered, or a will executed, as aforesaid.

Part VI, sec. 5(2), page 24.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes set out in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schedule III to that Act.

55. Capacity of widow to take in adoption.—(1) Any Hindu widow who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption to her husband;

Provided that—

(a) her husband has not expressly or impliedly prohibited her from adopting ; and

(b) her power to adopt has not terminated.

(2) Nothing in sub-section (1) shall be deemed to prevent a Hindu widow who has not completed the age of eighteen years from adopting a boy named by her husband in any authority conferred on her in the manner hereinafter provided

Part VI, sec. 6, page 24.

(59)

56. Authority or prohibition in regard to adoption.—(1) Any male Hindu who has the capacity to take a son in adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing so.

(2) Where there are more wives than one, the authority may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, has expressly authorised any one or more of them to adopt a son, he shall be deemed to have prohibited the others from adopting.

Part VI, sec. 7, page 24,

(60)

57. Manner of giving authority or imposing prohibition or revoking the same.—(1) No authority to adopt, and no prohibition of adoption, shall be valid unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(2) Any authority or prohibition so given or imposed may be revoked either by an instrument registered, or a will executed, as aforesaid.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes set out in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schedule III to that Act.

(61)

(62)

58. Right to adopt as between two or more widows.— Where a Hindu has left two or more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions :—

(a) If he has granted to all or any of them authority to adopt, indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to whom authority has been granted, as determined by section 59.

(c) If he has neither authorised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section 59.

(d) A widow having the right to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument, if she does not so renounce it and if, without just cause, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior widow, mid so on down to the last widow in the order of seniority

(63)

59. Seniority among wives and widows.—For the purpose of this Part, seniority among the wives or widows of a person is determined by the order in which they were married to him, the woman who was married earlier being reckoned senior to the woman who was married later.

(64)

Part VI, sec. 8, page 25.

60. Widow's right to adopt not exhausted by previous exercise.— A widow may, subject to the provisions of this Part, adopt several sons in succession, one after the death of another, unless the authority, if any, conferred upon her by her husband otherwise provides.

58. Right to adopt as between two or more widows.— Where a Hindu has left two or more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions:—

(a) If he has granted to all or any of them authority to adopt, indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to whom authority has been granted, as determined by section 59.

(c) If he has neither authorised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section 59.;

(d) A widow having the right to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument, if she does not so renounce it and if, without just cause, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior widow, and so on down to the last widow in the order of seniority.

Part VI, sec. 9, page 25.

(62)

59. Seniority among wives and widows.—For the purpose of this Part, seniority among the wives or widows of a person is determined by the order in which they were married to him, the woman who was married earlier being reckoned senior to the woman who was married later.

Part V, sec. 10, page 25.

(63)

60. Widow's right to adopt not exhausted by previous exercise.—A widow may, subject to the provisions of this Part, adopt several sons in succession, one after the death of another, unless the authority, if any, conferred upon her by her husband otherwise provides.

(64)

(65)

61. Termination of widow's right.—(1) A widow's right to adopt terminates—

(a) when she remarries, or

(b) when any Hindu son of her husband dies leaving him surviving a Hindu son, widow or son's widow, or

(c) if she ceases to be a Hindu.

Explanation.—In this sub-section, son means a son, son's son, or son's sons's son, whether by legitimate blood relationship or by adoption.

(2) The widow's right to adopt shall not revive after it has once terminated.

(66)

Capacity to give in adoption

62. Persons capable of giving in adoption.—(1) No person except the father or mother of the boy shall have the capacity to give the boy in adoption.

(2) Subject to the provisions of clauses (b) and (c) of sub-section (3), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother where she is capable of giving consent.

(3) The mother may give the boy in adoption—'

(a) if the father is dead,

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 of Part VII,

(c) if he has ceased to be a Hindu, or

(d) if he is not capable of giving consent:

Provided that the father has not prohibited her from doing so by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years.

Explanation.—For the purpose of this section,— Part V, sec. 10, page 25.

(i) the expressions "father", or "mother" do not include an adoptive father or an adoptive mother; and

(ii) a father or mother shall be deemed to be incapable of giving consent if he or she, as the case may be, is of unsound mind or has not completed the age of eighteen years.

61. Termination of widow's right.—(1) A widow's right to adopt terminates—

(a) when she remarries; or

(b) when any Hindu son of her husband dies leaving him surviving a Hindu son, widow or son's widow; or

(c) if she ceases to be a Hindu.

Explanation.—In this sub-section, son means a son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption.

(2) The widow's right to adopt shall not revive after it has once terminated. Part V, sec. 12, page 25.

Capacity to give in adoption

62. Persons capable of giving in adoption.—(1) No person except the father or mother of the boy shall have the capacity to give the boy in adoption.

(2) Subject to the provisions of clauses (b) and (e) of sub-section (3), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother where she is capable of giving consent.

(3) The mother may give the boy in adoption—

(a) if the father is dead;

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 of Part VII;

(c) if he has ceased to be a Hindu ; or

(d) if he is not capable of giving consent:

Provided that the father has not prohibited her from doing so by an insuument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years.

Explanation.—For the purposes of this section,—

(i) the expressions "father", or "mother" do not include an adoptive father

or an adoptive mother; and

(ii) a father or mother shall be deemed to be incapable of giving consent if he or she, as the case may be, is of unsound mind or has not completed the age of eighteen years.

(66)

(67)

Capacity to be taken in adoption

63. Who may be adopted.—(1) No female shall be adopted by or to any male or female Hindu.

(2) No boy shall be capable of being taken in adoption, unless the following conditions are satisfied, namely, that—

(i) he is a Hindu;

(ii) he has not been married;

(iii) he has not been already adopted;

(iv) he has not completed the age of fifteen years.

(68)

64. Certain persons declared capable of being adopted.—For the avoidance of doubt, it is hereby declared that the adoption of the following persons is permissible, namely :—

(i) the eldest or the only son of his father;

(ii) the son of a woman whom the adoptive father could not have legally married, and in particular, is daughter's son, sister's son, or mother's sister's son: and

(iii) a stranger although near relatives of the adoptive father exist.

(69)

Essential ceremonies

65. Completion of adoption.—An adoption is not valid and binding unless the boy to be adopted is physically given and taken in adoption by the parents concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption. **Part VI, sec. 3, page 24.**

Explanation.—The performance of the *Datta homam* is not essential to the validity of an adoption. **Part VI, sec. 3, page 26.**

Capacity to be taken in adoption

63. Who may be adopted.—(1) No female shall be adopted by or to any male or female Hindu.

(2) No boy shall be capable of being taken in adoption, unless the following conditions are satisfied, namely, that—

(i) he is a Hindu;

(ii) he has not been married ;

(iii) he has not been already adopted;

(iv) he has not completed the age of fifteen years. **Part VI, sec. 14, page 26.**

64. Certain persons declared capable of being adopted.—For the avoidance of doubt, it is hereby declared that the adoption of the following persons is permissible, namely:—

(i) the eldest or the only son of his father;

(ii) the son of a woman whom the adoptive father could not have legally married, and in particular, is daughter's son, sister's son, or mother's sister's son; and

(iii) a stranger although near relatives of the adoptive father exist. **Part VI, sec. 15, page 26.**

Essential ceremonies

65. Completion of adoption.—An adoption is not valid and binding unless the boy to be adopted is physically given and taken in adoption by the parents

concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption.

Explanation.—The performance of the *Datta homam* is not essential to the validity of an adoption.

(69)

(70)

Other conditions for adoption

66. Other conditions.—(1) In every adoption, the following conditions must be complied with :—

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Explanation.—A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the purposes of this clause.

(ii) The same boy may not be adopted simultaneously by or to two or more persons nor may two or more boys be simultaneously adopted by or to the same person.

(iii) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

(2) Where the consent of the person giving or of the person taking in adoption has been obtained by coercion, undue influence, fraud, misrepresentation or mistake, either party may sue for a declaration that the adoption is invalid:

Provided that the Court shall dismiss such suit—

(a) if the suit is filed more than two years after the coercion or undue influence had ceased or the fraud, misrepresentation or mistake had been discovered; or

(b) if the person whose consent has been so obtained has confirmed the adoption after the coercion, undue influence has ceased, or after

the fraud, misrepresentation or mistake has been discovered, as the case may be, and such confirmation does not prejudice the rights of others.

Part VI, sec. 16, page 26.

(3) Where no suit is brought within the time limit specified in clause (a) of sub-section (2) or where an adoption has been confirmed under clause (b) of the said sub-section it shall be deemed to be valid and effectual for all purposes as from the date of adoption.

Other conditions for adoption

66. Other conditions.—(1) In every adoption, the following conditions must be complied with:—

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Explanation.—A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the purposes of this clause.

(ii) The same boy may not be adopted simultaneously by or to two or more persons nor may two or more boys be simultaneously adopted by or to the same person.

(iii) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

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Provided that the Court shall dismiss such suit—

(a) if the suit is filed more than two years after the coercion or undue influence had ceased or the fraud, misrepresentation or mistake had been discovered; or

(b) if the person whose consent has been so obtained has confirmed, the adoption after the conrcion, undue influence has ceased, or after the fraud, misrepresentation or mistake has been discovered, as the

case may be, and such confirmation does not prejudice the rights of others.

(3) Where no suit is brought within the time limit specified in clause (a) of sub-section (2) or where an adoption has been confirmed under clause (b) of the said sub-section it shall be deemed to be valid and effectual for all purposes as from the date of adoption.

(70)

(71)

CHAPTER II

Effects of adoption

67. Effects of adoption.—An adopted son shall be deemed to be the son of his adoptive father for all purposes with effect from the date of the adoption and from such date all his ties in the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

(a) he cannot marry any person whom he could not have married if he had continued in the family of his birth;

(b) any property which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to me ownership of such property, including the obligation to maintain relatives in the family of his birth;

(c) the adopted son shall not divest any person of any estate which vested in him or her before the adoption, except in the manner and to the extent specified in section 68.

(72)

68. Divesting of estates by adoption.—*Where, after the commencement of this Code, a widow makes an adoption, the adopted son shall take—

(a) one-half of the estate inherited by her and her co-widows, if any, as the heirs of the adoptive father * * * *;

(b) if the adoption is made after the death of a son, son's son, son's, son's son of the adoptive father, one-half of the estate the adoptive mother and her co-widows, if any, inherited from the adoptive father, and in addition, one-half of the estate inherited by the adoptive mother as the heir of her son, son's son, or son's son's son,

the share in the estate in each case being determined as it stood immediately before the adoption:

Provided that if the whole estate or any part thereof inherited by her or them is impartible by custom, usage or by the terms of any grant or enactment, the adopted son shall have the whole of such impartible estate as it stood immediately before the adoption in addition to what he may be entitled to under clause (a) or clause (b).

Part VI, sec. 18, page 27.

* * * * * *

CHAPTER II

Effects of adoption

67. Effects of adoption.—An adopted son shall be deemed to be the son of his adoptive father for all purposes with effect from the date of the adoption and from such date all his ties in the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

(a) he cannot marry any person whom he could not have married if he had continued in the family of his birth;

(b) any property which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his birth;

Part VI, sec. 19, page 27.

(c) the adopted son shall not divest any person of any estate which vested in him or her before the adoption, except in the manner and to the extent specified in section 68.

(71)

68. Divesting of estates by adoption.—(1) Where, after the commencement of this Code, a widow makes an adoption, the adopted son shall take—

(a) one-half of the estate inherited by her and her co-widows, if any, as the heirs of the adoptive father as it stood immediately before the adoption;

(b) if the adoption is made after the death of a son, son's son, son's son's son of the adoptive father, one-half of the estate the adoptive mother and her co-widows, if any, inherited from the adoptive father, and in addition, one-half of the estate inherited by the adoptive mother as the heir of her son, son's son, or son's son's son,

the share in the estate being determined as it stood immediately before the adoption:

Provided that if the whole estate or any part thereof inherited by her or them is impartible by custom, usage or by the terms of any grant or enactment, the adopted son shall have the whole of such impartible estate as it stood immediately before the adoption in addition to what he may be entitled to under clause (a) or clause (b).

(2) The provisions of sub-section (1) shall apply in respect of agricultural land, wherever situate in the Provinces of India.

(72)

(73)

69. Right of adoptive to dispose of their properties.—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

(74)

70. Determination of the adoptive mother in case of adoption by widower.—(1) Where a Hindu who has a wife living adopts a son, she shall be deemed to be the adoptive mother.

(2) Where a Hindu has more than one wife living—

(i) that wife in association with whom or with whose consent he makes the adoption, or

(ii) if more than one wife has been so associated or has so consented, the seniormost in marriage among the wives so associated or consenting;

shall be deemed to be the adoptive mother, and the other wives the stepmothers, of the adopted son.

(3) Where a widower adopts at any time after his wife's death, the wife who died last immediately preceding the adoption, shall be deemed to be the adoptive mother, and any other predeceased wife or any wife

subsequently married by him shall be deemed to be the step-mother, of the adoptive son, unless the adoptive father has directed or given a clear indication that some other of such wives shall be deemed to be the adoptive mother; in which case, any predeceased wife who is not the adoptive mother and any wife subsequently married by the adoptive father shall be deemed to be the stepmothers of the adopted son.

Part VI, sec. 21(2), page 27.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the step-mother of the adopted son.

69. Right of adoptive parents to dispose of their properties.—subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

Part VI, sec. 22, page 27, 28.

70. Determination of the adoptive mother in case of adoption by widower.—(1) Where a Hindu who has a wife living adopts a son, she shall be deemed to be the adoptive mother.

Part VI, sec 22(3), page 28.

(2) Where a Hindu has more than one wife living—

(i) that wife in association with whom or with whose consent he makes the adoption, or

(ii) if more than one wife has been so associated or has so consented, the seniormost in marriage among the wives so associated or consenting; shall be deemed to be the adoptive mother, and the other wives the step-mothers of the adopted son.

(3) Where a widower adopts at any time after his wife's death, the wife who died last immediately preceding the adoption, shall be deemed to be the adoptive mother, and any other predeceased wife or any wife subsequently married by him shall be deemed to be the step-mother, of the adopted son, unless the adoptive father has directed

or given a clear indication that some other of such wives shall be deemed to be the adoptive mother; in which case, any predeceased wife who is not the adoptive mother and any wife subsequently married by the adoptive father shall be deemed to be the step-mothers of the adopted son.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the step-mother of the adopted son.

(74)

(75)

71. Determination of the adoptive mother in case of adoption by widow.—(1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother, and the other widows the step-mothers, of the adopted son.

(2) Where two or more widows jointly make an adoption, the seniormost in marriage among the widows shall be deemed to be the adoptive mother, and the other widow or widows the step-mother or step-mothers, of the adopted son.

(76)

72. Valid adoption not to be cancelled.—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such adopted son and return to the family of his birth.

Part VI, sec. 23, page 28.

(77)

73. Certain agreements to be void.—An agreement not to adopt, or curtailing the rights of an adopted son, is void.

71. Determination of the adoptive mother in case of adoption by widow.—(1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother, and the other widows the step-mothers, of the adopted son.

(2) Where two of more widows jointly make an adoption, the seniormost in marriage among the widows shall be deemed to be the adoptive mother, and the other widow or widows the step-mother or step-mothers, of the adopted son.

(75)

72. Valid adoption not to be cancelled.—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such and return to the family of his birth.

Part VI, sec. 20, page 27.

(76)

73. Certain agreements to be void.—An agreement not to adopt, or curtailing the rights of an adopted son, is void.

(77)

(78)

CHAPTER III

Registration or record of adoptions

74. Registration and proof of adoptions.—(1) The State Government may, by notification in the Official Gazette, direct that in the State or in such areas as may be specified in the notification, no adoption made under the provisions of this Part shall be valid unless evidenced by a document in writing duly registered under any law for the time being in force relating to the registration of documents.

(2) Where an adoption is required to be evidenced by a registered document under sub-section (1) no evidence shall be given in proof of such adoption except the document itself.

74A. Recording of adoptions in cases to which section 74 does not apply.—Where no notification has been issued under section 74, the State Government may, for the purpose of facilitating the proof of any adoption made under the provisions of this Part, by rules, provide that particulars relating to such adoption shall be entered in the Register of Adoptions maintained in this behalf by such authority as may be appointed for this purpose by the State Government:

Provided that an application is made to such authority in the manner specified in section 75.

(79)

75. Application when to be made and particulars to be set out therein.—The application under section 74A shall be signed by the person taking, and the person giving, in adoption and shall be made within ninety days of the adoption. It shall state the following particulars and such other particulars as may be prescribed:—

(i) the date of the adoption;

(ii) the form of the adoption;

(iii) the name or names, and the age or ages, of the person or persons taking in adoption;

(iv) if the adoptive father is a married man, the name of his wife; and if he is a widower the name of his pre-deceased wife;

If there are two or more wives or pre-deceased wives, their names, the order in which, and the dates on which, they were married to him, and the name of the wife or pre-deceased wife who is the adoptive mother, if any;

Part VI, sec. 30, page 29.

(v) if the person adopting is a woman, the name of her husband and the names of her co-wives or co-widows, if any;

(vi) the name and age of the person giving in adoption;

(vii) the name of the adopted boy in the family of his birth;

(viii) the age of the adopted boy; and

(ix) the name of the adopted boy in the family of his adoption.

CHAPTER III

Record of adoptions

74. Application for recording of adoption.—When an adoption has been made under the provisions of this Part and the parties thereto desire to have the adoption recorded in the Register of Adoptions maintained for this purpose, they may apply in this behalf to such authority as may be appointed for this purpose by the Provincial Government, by notification in the official Gazette, and who has jurisdiction in the place where the adoption was made

Part VI sec. 31, page 29.

75. Application when to be made and particulars to be out therein.—The application shall be signed by the person taking, and the person giving, in adoption and shall be made within ninety days of the adoption. It shall state the following particulars and such other particulars as may be prescribed:—

(i) the date of the adoption;

(ii) the form of the adoption;

(iii) the name or names, and the age or ages, of the person or persons taking in adoption ;

(iv) if the adoptive father is a married man, the name of his wife; and if he is a widower the name of his pre-deceased wife;

If there are two or more wives or pre-deceased wives, their names,

the order in which, and the dates on which, they were married to him, and the name of the wife or pre-deceased wife who is the adoptive mother, if any;

(v) if the person adopting is a woman, the name of her husband and the names of her co-wives or co-widows, if any;

(vi) the name and age of the person giving in adoption;

(vii) the name of the adopted boy in the family of his birth ;

(viii) the age of the adopted boy; and

(ix) the name of the adopted boy in the family of his adoption.

(79)

(80)

76. Recording of adoption.—If the authority appointed under section 74A is satisfied that the application has been signed by the person taking and the person giving in adoption and that the adoption has taken place as stated, he shall cause a record of the adoption to be made in the Register of Adoption.

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(80)

(81)

PART IV—MINORITY AND GUARDIANSHIP

77. Definitions.—In this Part—

(a) "minor" means a person who has not completed the age of eighteen years;

(b) "natural guardian" means any of the guardians referred to in section 78, but does not include a guardian—

(i) appointed by the will of the minor's father, or

(ii) appointed or declared by a court, or

(iii) empowered to act as such by or under any enactment relating to any court of wards.

(82)

78. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property are—

(a) in the case of a boy or unmarried girl—the father, and after him, the mother : provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu ; or

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110. **Part V, sec. 1, page 22.**

(83)

79. Natural guardianship of adopted son.—The natural guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption.

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(a) in the case of a boy or unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother,

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother and after her, the father; **Part V, sec. 5, page 22.**

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu ; or

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110.

(82)

79. Natural guardianship of adopted son.—The natural guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption.

(83)

(84)

80. Power of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any other person affected thereby.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (VIII of 1890), shall apply to, and in respect of, an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, "court" means the district court within the local limits of which the immovable property in respect of which the application is made, or any part thereof, is situated, or a court empowered under section 4A of the Guardians and Wards Act, 1890 (VIII of 1890).

80. Power of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

Part V, sec. 6, page 23.

(2) The natural guardian shall not, without the previous permission of the court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

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(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A

thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, "court" means the district court within the local limits of which the immovable property in respect of which the application is made, or any part thereof, is situated, or a court empowered under section 4A of the Guardians and Wards Act, 1890 (VIII of 1890).

(84)

(85)

81. Revocation of authority by natural guardian.—Where the natural guardian of a Hindu minor authorises another person to take charge of the minor, the authority is revocable except—

(a) where it is not in the interests of the minor to permit revocation; or

(b) where the natural guardian has ceased to be a Hindu; or

(c) where for any other sufficient cause, it is not desirable to permit revocation.

(86)

82. Testamentary guardian and his powers.—(1) A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property, or in respect of both;

Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor if the mother is alive and is capable of acting as the natural guardian of her minor child.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will.

(3) Subject to the provisions of this Part, a Hindu widow may, by will appoint a guardian for any of her minor children in respect of the

**Dr. Ambedkar's remarks, in his copy 'Not to be moved'* —Ed.

person of the minor;

Part V, sec. 7, page 23.

Provided that her husband has not already by will appointed any person to be the guardian of the person of such child.

(4) The right of the guardian so appointed shall, where the minor is a girl, cease on her marriage.

(87)

***83. Duty of guardian regarding religious upbringing of minor.**— It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion of the father of the minor.

(88)

Part V, sec. 8, page 23.

84. De facto guardian not to deal with minor's property.—After the commencement of this Code, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

81. Revocation of authority by natural guardian.— Where the natural guardian of a Hindu minor authorises another person to take charge of the minor, the authority is revocable except—

(a) where it is not in the interests of the minor to permit revocation; or

(b) where the natural guardian has ceased to be a Hindu ; or

(c) where for any other sufficient cause, it is not desirable to permit revocation.

(85)

82. Testamentary guardian and his powers.—(1) Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property, or in respect of both;

Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor if the mother is alive and is capable of acting as the natural guardian of her minor child.

Part V, sec. 9, page 23.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will.

Part V, sec. 10, page 23.

(3) Subject to the provisions of this Part, a Hindu widow may, by will, appoint a guardian for any of her minor children in respect of the person of the minor:

Provided that her husband has not already by will appointed any person to be the guardian of the person of such child.

(4) The right of the guardian so appointed shall, where the minor is a girl, cease on her marriage.

(86)

83. Duty of guardian to bring up minor as a Hindu—It shall be the duty of the guardian of a Hindu minor to bring up the minor as a Hindu.

(87)

84. De facto guardian not to deal with minor's property.—Alter the commencement of this Code, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

(88)

(89)

85. Welfare of minor to be paramount consideration.—In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of section 24, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

85. Welfare of minor to be paramount consideration.— In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of section 24, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

Part V, sec. 12, page 22.

(90)

PART V.—JOINT FAMILY AND CO-PARCENARY

CHAPTER I

General

86. Abrogation of right by birth and survivorship generally.—Except in the cases and to the extent expressly provided in this Part, no Hindu shall, after the commencement of this Code, acquire any right to, or interest in—

(a) any property of an ancestor during his lifetime merely by reason of the fact that he is born in the family of the ancestor, or

(b) any joint family property which is founded on the rule of survivorship.

(91)

87. Joint tenancy to be replaced generally by tenancy-in-common.—Except in the cases and to the extent expressly provided in this Part, * * * all persons holding, on the commencement of this Code, any property jointly as members of a joint family shall be deemed to hold the property as tenants-in-common, as if a partition had taken place between them as respects such property on such commencement and as if each one of them is holding his or her own share separately as full owner thereof;

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed.

* * * * *

PART V.—JOINT FAMILY PROPERTY

86. Birth in family not to give rise to rights in property.—On and after the commencement of this Code, no right to claim any interest in any property of an ancestor during his lifetime, which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any Court.

Part IIIA, sec. 2, page 12.

Explanation.—In this section, "property" includes both movable and immovable property, whether ancestral or not and whether acquired jointly with other members of the family or by way of acretion to any ancestral property or in any other manner whatsoever.

(90)

87. Joint tenancy to be replaced by tenancy-in-common.—On and after the commencement of this Code, no Court shall recognise any right to or interest in any joint family property, based on the rule of survivorship ; and all persons holding any joint family property on the day this Code comes into force shall be deemed to hold it as tenants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Code and as if each one of them is holding his or her own share separately as full owner thereof:

Part IIIA, sec. 2, page 11.

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed :

Provided further that in the case of any female who becomes entitled to hold any share separately under the provisions of this section, she shall only take the limited estate known as the Hindu woman's estate under the law in force before the commencement of this Code and on her death such estate shall revert to the persons entitled thereto under the law in force prior to the commencement of this Code.

Part II, sec. 3, proviso p. 3.

(91)

(92)

88. Rule of pious obligation * * * * abrogated.—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against any male lineal descendant for the recovery of any debt due from any of his paternal ancestors or any alienation of property in respect of or in satisfaction of any such debt on the ground of the pious obligation of such descendant to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against any such descendant, or

(b) any alienation made in respect of or in satisfaction of any such debt,

and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanation.—For the purposes of sub-section (2) the expression "such descendant" shall be deemed to refer to the male lineal descendant who was born or adopted prior to the commencement of this Code.

(93)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the manager or *Karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Code had not been passed.

88. Rule of pious obligation of Hindu son abrogated.—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great grandfather any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or,

(b) any alienation made in respect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanation.—For the purposes of sub-section (2) the expression "son, grandson, or great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of this Code.

(92)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the manager or *Karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Code had not been passed.

(93)

(94)

CHAPTER II

Mitakshara Co-parcenary

90. Application of Chapter.—This Chapter applies to Hindus who would have been governed by the mitakshara school of Hindu law if this Code had not been passed.

90A. Definition.—In this Chapter,—

"ancestral property" means any property acquired by a male Hindu by way of inheritance from his father, father's father or father's father's father, and includes—

(a) any share in the property of any such paternal ancestor allotted to him on partition, and

(b) any accretions to ancestral property;

but shall not be deemed to include—

(i) any gains of learning as defined in the Hindu Gains of Learning Act, 1930 (XXX of 1930), acquired by him;

(ii) any property acquired by him otherwise than by way of inheritance;

(iii) any property acquired by him by way of inheritance from any person other than any of the three immediate paternal ancestors, and

(iv) any other separate property in his possession,

although all or any of such properties are for the time being shared by him jointly with a co-parcener.

Explanation.—Accretions to ancestral property include income from such properly, property purchased or acquired out of such income or with the assistance of such property, the proceeds of sale of such property, and property purchased out of such proceeds;

90B. Co-parcenary.—(1) A person becomes a co-parcener if the following conditions are fulfilled, namely:—

(i) that he—

(a) has either inherited any ancestral property, or

(b) is born in the family of the person who has inherited any such property and is a lineal descendant of such person in the male line ; and

(ii) that in the ease of any person referred to in sub-clause (b) of clause (i) he is not for the time being removed more than four degrees—

(a) from the person who has inherited any such property, or

(b) from any of the descendants of any person who has so inherited and who is the oldest living paternal ancestor of that person in the male line.

(2) For the purpose of computing the number of degrees under sub-section (1), the person concerned and the person with respect to whom the relationship is to be traced shall each be counted as one degree.

(3) When there is a partition among the members of a co-parcenary, the co-parceners who have separated shall cease to be co-parceners with respect to each other; but it shall not be presumed, until the contrary is proved:—

(a) that each of the persons so separating has, by reason only of such separation, ceased to be a co-parcener with respect to his own descendants in the male line; or

(b) that, where only one co-parcener has so separated, the remaining members of the co-parcenary have, by reason only of such separation, ceased to be co-parceners as amongst themselves.

(4) "Co-parcenary" is a body of two or more male persons who are for the time being co-parceners.

(95)

90C. Incidents of co-parcenary property.—The following rules shall apply to any ancestral property acquired, whether before or after the commencement of this Code, by a member of a co-parcenary :—

(a) every co-parcener shall by reason of his birth in the family of the person acquiring ancestral property have an interest in the property equal to that of his father;

(b) all the members of the co-parcenary shall hold the property as joint tenants;

(c) on the death of any co-parcener (other than the sole surviving member) his interest in the property shall devolve by survivorship on the surviving members of the co-parcenary and not by succession on his heirs ;

(d) notwithstanding anything contained in clause (c), where a coparcener dies, his widow and daughter shall amongst themselves have in the property—

(i) in the case of the widow, an interest equal to that of the son,

(ii) in the case of an unmarried daughter, an interest equal to onehalf of that of the son and, in the case of a married daughter, one quarter of that of the son.

(96)

90D. Extent of right of co-parcener to alienate co-parcenary property.—Neither any co-parcener nor any female who acquires an interest in any ancestral property by reason of the provisions contained in clause (d) of section 90C shall, by reason merely of the fact of being a co-parcener or of having acquired such interest, be entitled to transfer or charge in any way the property except his or her undivided or other interest therein, and no court shall, in execution of any decree passed against any such member or female, proceed against any ancestral property otherwise than against the interest in the property belonging to such co-parcener or female, as the case may be.

(97)

90E. Right to claim partition of to-parcenary property.—(1) Any co-parcener and any female who has acquired an interest in ancestral property by reason of the provisions contained in clause (d) of section 90C may, at any time, claim partition and separate enjoyment of his or her share in the property whether or not the other parties concerned are agreeable thereto.

(2) Where any female who has acquired any such interest as is referred to in sub-section (1) dies without claiming partition and obtaining separate enjoyment of her share in the property, her interest in the property shall, on her death, revert to the members of the co-parcenary.

(98)

90F. Right of co-parcener to buy off the share of another co-parcener, etc., in certain cases.—Notwithstanding anything contained in section 90D a co-parcener may require any other co-parcener who has ceased to be a Hindu by conversion to another religion or a female who has acquired an interest in ancestral property by reason of the provisions contained in clause (d) of section 90C to take his or her share in the ancestral property for separate enjoyment and thereupon the provisions of the Partition Act, 1893 (IV of 1893), shall apply as if there was a partition and as if the co-parcener who has ceased to be a Hindu or the female, as the case may be, were the transferee of a share of a dwelling house belonging to the co-parcenary.

(99)

90G. Allotment of shares on partition.—The following rules shall apply to regulate the allotment of shares to the members of a co-parcenary on a partition being made amongst them, namely:—

(a) where the partition is between a father and his sons, each son shall take a share equal to that of his father;

(b) where the partition is between brothers, they, shall take equal shares;

(c) where the partition is between co-parceners belonging to different branches of the family, the property shall be divided amongst the branches equally *per stirpes*;

(d) where the partition is between co-parceneras belonging to the same branch, the property shall be divided equally amongst them *per capita.*

(100)

90H. Termination of coparcenary.—So long as there is no other coparcener in the family, every person who acquires any ancestral property shall be entitled to hold the property as an absolute owner, and on his death, the property shall devolve on his heirs by succession and not by survivorship.

(101)

CHAPTER III

Marumakkattayam, Aliyasantana and Nambudri joint families

90I. Special provisions repecting Marumakkattayam, Aliyasantana and Nambudri joint families.—Nothing contained in this Part shall apply to any *tarwad, tavazhi, kutumba, kavaru* or *illom* to which the Marumakkattayam, Aliyasantana or Nambudri law would have applied if this Code had not been passed, and, notwithstanding anything contained in this Code, all matters relating to the rights (whether by way of succession or otherwise) of any person in, or the management or partition of, any such *tarwad, tavashi, kutumba, kavaru* or *illom* and of its properties shall continue to be regulated by the law which was applicable thereto immediately before the commencement of this Code, as if that law had not been repealed by this Code.

(102)

CHAPTER IV

Miscellaneous

90J. Savings.—Nothing contained in this Part shall apply to—

(a) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment; or

(b) any estate attached to a *sthanam* (position of dignity) and enjoyed by a single person from time to time in accordance with any law, custom or usage in force in the State of Travancore-Cochin or in the districts of Malabar, South Canara and Nilgiris of the State of Madras ; or

(c) the following estates situated in the State of Travancore-Cochin, namely:—

Idapally, Poonjar and Kilimanoor Estates and the Valiamma Thampuran Kovilagam Estate including the Palace Fund.

90. Saving of impartible estates.—Nothing contained in this Part shall apply to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(103)

PART VI.—WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property.

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property :

Provided that no such implication shall arise by reason only of her sex.

Explanation.—In this section "property" includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

(104)

92. Devolution of woman's property.—(1) Where any woman dies after the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII.

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu woman's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her;

(ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

PART VI.—WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property. **Part II, Sec. 13, page 9.**

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property:

Provided that no such implication shall arise by reason only of her sex.

Explanation.—In this section "property" includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

(103)

92. Devolution of woman's property.—(1) Where any woman dies after the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII. **Part II, Sec. 3, page 3.**

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu women's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her,

(ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

(104)

(105)

93. Dowry to be held in trust for wife.—(1) In the case of any marriage solemnized after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the properly of the woman whose marriage has been so solemnized.

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnized as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, "dowry" includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to any relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

93. Dowry to be held in trust for wife.—(1) In the case of any marriage solemnized after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the property of the woman whose marriage has been so solemnized.

Part IV, sec. 28, page 20.

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnized as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, "dowry" includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to any relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

(106)

PART VII.—SUCCESSION

CHAPTER I

Application

94. Certain estates excluded from operation of Part.—This Part shall not apply to * * *,—

(i) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment, or to any other estate specified in section 90J, or

(ii) any property which devolves by survivorship on the surviving members of a co-parcenary in accordance with the provisions of Part V, or

(iii) any property belonging to a tarwad, *tavazhi*, *kutumba*, *kavaru or illom* to which the provisions of section 901 apply.

(107)

95. Application of Part.—Save as otherwise expressly provided in section 94, this Part regulates the succession to the property of a Hindu dying intestate after the commencement of this Code in the following cases, namely:—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in the territories to which this Act extends at the time of his or her death ;

(b) where the property is immovable property situate in the said territories, whether the intestate was domiciled in the said territories at the time of his or her death or not.

Explanation—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(108)

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of intestate succession, no distinction shall be made,—

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir * * * who is a widow and one who is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

PART VII.—SUCCESSION

CHAPTER I

General

94. Certain estates excluded from operation of Part.— This Part shall not apply to.— **Part II, sec. 1, page 2.**

(i) agricultural land in Governors' Provinces; or

(ii) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(106)

95. Application of Part.—Save as provided in section 94, this Part regulates the succession to the property of a Hindu dying intestate after the commencement of this Code in the following cases, namely :— **Part II, sec. 3, page 3.**

(a) where the property is movable properly, unless it is proved that the intestate was not domiciled in any of the Provinces of India at the time of his or her death ;

(b) where the property is immovable property situate in any of the Provinces of India, whether the intestate was domiciled in any of the Provinces of India at the time of his or her death or not.

Explanation.—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(107)

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of intestate succession, no distinction shall be made,— **Part II, sec. 7, (Rules 2 and 4, page 6.**

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir who is married and one who is unmarried or a female heir who is a widow and one who is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

(108)

(109)

CHAPTER II

Intestate succession to the property of males

General Provisions

97. Definitions.—(1) In this Part, unless the context otherwise requires.—

(a) "agnate"—a person is said to be an agnate (*gotraja*) of another if the two are related by blood or adoption wholly through males;

(b) "cognate"—a person is said to be a cognate *(bandhu)* of another in the two are related by blood or adoption wholly through males;

(c) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) "intestate"—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(2) In this Part, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

(110)

98. General rules of succession in the case of males.—Save as otherwise expressly provided in sections 105A to 105J inclusive, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Eighth Schedule;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of the Eighth Schedule;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102 ; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(111)

99. Order of succession amongst preferential heirs.—As amongst the preferential heirs those in class I of the Eighth Schedule shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession.

CHAPTER II

Intestate succession

Succession to the property of a Hindu mile

Part II, sec. 2, page 2. Part II, sec. 5, page 2.

97. Definitions.—(1) In this Part, unless there is anything repugnant in the subject or context,—

(a) "agnate"—a person is said to be an agnate (*gotraja*) of another, if the two are related by blood or adoption wholly through males;

(b) "cognate"—a person is said to be a cognate (*bandhu*) of another in the two are related by blood or adoption but not wholly through males;

(c) "heir " means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) "intestate"—a person is deemed to the intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect ;

(2) In this Part, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females.

Part II, sec. 4, page 4

98. Rule of succession in the case of male Hindu.—Subject to the provisions of this Part, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Schedule VII;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of Schedule VII;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(110)

Part II, sec. 6, page 6.

99. Order of succession amongst preferential heirs.—As amongst the preferential heirs those in class I of Schedule VII shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession.

(111)

(112)

100. Distribution of property amongst preferential heirs in class I.—(1) The property of an intestate shall be divided among the preferential heirs in class I of the Eighth schedule so that the share of the widow shall be equal to that of each son, including a predeceased son leaving a son or a son's son living at the intestate's death, and the share of each unmarried daughter shall be half that of each son and the share of each married daughter shall be one-quarter of that of each son:

Provided that where a predeceased son leaves no son or son's son but leaves his widow or his son's widow living at the intestate's death, then the share of such predeceased son shall be half that of a son of the intestate.

(2) The share given to a predeceased son of the intestate under sub-section (1) shall be divided as follows:—

(a) If such predeceased son has left a son or a son's son living at the intestate's death then his share shall be divided so that the share of the widow of such predeceased son shall be equal to that of a son of such predeceased son including any son who may have died before the intestate leaving a son living at the intestate's death :

Provided that if any son of such predeceased son dies before the intestate leaving a widow but no son living at the intestate's death then the share of such son of the predeceased son shall be half that of any other son of such predeceased son.

(b) The share of any son of the predeceased son who may have died before the intestate shall be divided between his widow and his sons in equal shares.

(c) If such predeceased son has left a widow or a son's widow or widows of two or more sons but has not left a son or a son's son living at the intestate's death then the share of such predeceased son shall be divided between his widow and his son's widows so that the share of the predeceased son's widow shall be double the share of the widow of each son of such predeceased son.

(3) For the purposes of this section where a person has left more than one widow all the widows shall take between them equally the share which a single widow would have taken.

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* * * * *

100. Distribution of property amongst preferential heirs in class I.—(1) The property of an intestate shall be divided among the preferential heirs in class I so that the share of the widow shall be equal to that of eaeh son, including a predeceased son leaving a son or a son's son living at the intestate's death and the share of each daughter shall be equal to that of each son :

Part IV, sec. 7, page 6.

Provided that where a predeceased son leaves no son or son's son but leaves his widow or his son's widow living at the intestate's death, then the share of such predeceased son shall be half that of a son of the intestate.

(2) The share given to a predeceased son of the intestate under sub-section (1) shall be divided as follows:—

(a) If such predeceased son has left a son or a son's son living at the intestate's death then his share shall be divided so that the share of the widow of such predeceased son shall be equal to that of a son of such predeceased son including any son who may have died before the intestate leaving a son living at the intestine's death :

Provided that if any son of such predeceased son dies before the intestate leaving a widow but no son living at the intestate's death then the share of such son of the predeceased son shall be half that of any other son of such predeceased son.

(b) The share of any son of the predeceased son who may have died before the intestate shall be divided between his widow and his sons in equal shares.

(c) If such predeceased son has left a widow or a son's widow or widows of two or more sons but has not left a son or a son's son living at the intestate's death then the share of such predeceased son shall be divided between his widow and his son's widows so that the share of the predeceased son's widow shall be double the share of the widow of each son of such predeceased son.

(3) For the purposes of this section where a person has left more than one widow all the widows shall take between them equally the share which a single widow would have taken.

Illustrations

(i) The surviving heirs of an intestate are three sons, A, B and C, five grandsons by a predeceased son D, and two great grandsons by a predeceased son of another predeceased son E, A, B and C take one share each, and the branches of D and E get one share each. The grandson in D's branch and the great grandson in E's branch divide the stare allotted to their respective branches equally. Each son of the intestate, therefore, takes one fifth of the heritable property, each grandson one-twenty-fifth, and each great-grandson one-tenth.

(ii) Only a widow or daughter survives an intestate. She takes the whole of the heritable property.

(114)

101. Mode of distribution amongst preferential heirs in class II.—The property of an intestate shall be divided between the preferential heirs in any one entry in class II of the Eighth Schedule so that they share equally.

(115)

102. Agnates who are heirs.—In the absence of any preferential heirs specified in class I or classs II of the Eighth Schedule, agnates of the deceased, related to the intestate within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part.

(iii) The surviving heirs are a widow and two grandsons by a predeceased son. The widow takes one share and the grandsons together take one share. The widow therefore, takes one half of the heritable property and each grandson one fourth.

(iv) The surviving heirs are a daughter and the widow of a predeceased son. The daughter takes one share, and the widow gets half a share.

(v) The surviving heirs are a son, a daughter, and the widow of a predeceased son. The son gets one share, the daughter gets one share, and the widow of the predeceased son gets half a share.

(vi) The surviving heirs are a son, a daughter, and the widow and the son of a predeceased son. The son gets one share, the daughter gets one share and the widow and the son of the predeceased son get between them one share, which has then to the distributed equally between them.

(vii) The surviving heirs are—

(a) a widow,

(b) a son.

(c) a daughter,

(d) the widow of a predeceased son,

(e) the widow and two sons of another predeceased son.

The widow gets one share; the son gets one share; the daughter gets one share; the widow of the first mentioned predeceased son—(d) above—gets half a share; and the heirs mentioned in (a) above between them get one share, which has then to be distributed equally among them.

(viii) The surviving heirs are—

(a) a son,

(b) the widow and three sons of a predeceased son,

(c) the widow of a predeceased son of the predeceased son referred to in (b), The son gets one share and the heirs in entries (b) and (c) together, get one share.

The latter share should be distributed so that the widow and each of the sons in entry (b) get portion each and the widow in entry (c) gets one-half of such a portion. In the result, the intestate's son gets one-half of the heritable property, the widow of his predeceased son gets one-ninth, each of the three sons of such predeceased son also gets one-ninth, and the widow of the intestate's grandson gets one-eighteenth

(113)

101. Mode of distribution amongst preferential heirs in class II.—The property of an intestate shall be divided between the preferential heirs in any one entry in class II of Schedule VII, so that they share equally.

(114)

102. Agnates who are heirs.—In the absence of any preferential heirs specified in class I or classs II of Schedule VII, agnates of the deceased, related to the intestate within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part.

Part I, sec. 8, page 7.

(115)

(116)

103. Cognates who are heirs.—In the absence of any preferential heir and agnates, cognates of the deceased related to the deceased within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part.

(117)

104. Order of succession amongst agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of ascent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where the two lines cannot be so distinguished, the heir who is a male is preferred in the heir who is a female.

Rule 5.—Where neither heir is entitled to be preferred to the other under the foregoing rules, they take together.

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103. Cognates who are heirs.—In the absence of any preferential heir and agnates, cognates of the deceased related to the deceased within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part. **Part I, sec. 8, page 7.**

(116)

104. Order of succession amongst agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:— **Part II, sec. 9, pages 7 & 8.**

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of ascent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where the two lines cannot be so distinguished, the heir who is a male is preferred to the heir who is a female.

Rule 5.—Where neither heir is entitled to be preferred to the other under the foregoing rules, they take together.

Illustrations

In the following illustrations, the letters F and M stand for the father and mother respectively in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and daughter respectively in that portion of the line which descend from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS stands for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) SDSS (son's daughter's son's son and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(ii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(iii) The competing heirs are (1) FDSS (sister's son's son) and MFSSD (material uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(v) The competing heirs are (I) MFM (mother's father's mother) and (2) FFFDSS father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz., three, but the former has no degree of descent while the latter has three such degrees. The former (1) is therefore preferred.

(117A)

105. Computation of degrees.—(1) For the purposes of determining the order of succession amongst agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed exclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

* * * * * *

(vi) The competing heirs are (1) FMF (father's mother's father) and (2) MFFF (mother's father's father). The number of degrees of ascent in both the cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point. No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(vii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point. No. (1) is in the male line and No. (2) father's mother's sister's son). The former is preferred.

(viii) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS father's mother's sister's son). The former's preferred.

(ix) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(117)

105. Computation of degrees.—(1) For the purposes of determining the order of succession amongst agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be. **Part II, sec. 8, page 7.**

(2) Degrees of ascent and degrees of descent shall be computed exclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

Illustrations

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent, but has three degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but has four degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughters of the intestate. She has no degrees of ascent, but has four degrees of descent represented in order by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. the has three degrees of ascent represented in order by (1) the intestate's mother, (2) her father and (3) the father's father, and two degrees of descent represented in order by (1) the daughter of the common ancestor, viz., the mother's father's father and (2) her son (the heir).

(117A)

(118)

Succession to the property of male Marumakkattayis, etc.

105 A. Rules of succession to male Marumakkattayis, etc. dying intestate.—Notwithstanding anything contained in this Chapter the separate or self-acquired property of a male Hindu who dies intestate in respect thereof, shall—

(a) in the case of a person to whom the Marumakkattayam or Aliyasantana law would have applied if this Code had not been passed, devolve in the order and according to the rules contained in sections 105-C to 105-1 inclusive; and

(b) in the case of a person to whom the Nambudri law would have applied if this Code had not been passed, devolve in the order and according to the rules set out in section 105-J.

(119)

105 B. Lineal descendant defined.—In sections 105C to 105J inclusive and in section 109A and 109B, the expression "lineal descendant", used with reference to any person, means any descendant of that person, whether in the male or female line or partly in the male and partly in the female line, and includes any child of that person.

(120)

105 C. Devolution of property, where there is a lineal descendant.—(1) Where the intestate has left him surviving a lineal descendant or descendants and his mother or a widow or widows or both his mother and a widow or widows, the whole of the intestate's property shall devolve on them.

(2) In the absence of the mother and widow, the whole of the property shall devolve on the lineal descendant or descendants.

(121)

105 D. Rules of distribution.—Where there is a lineal descendant, the distribution of the property among the heirs referred to in section 105C shall be made in accordances with the following rules, namely:—

(a) each child (son or daughter) shall be entitled to an equal share;

(b) where a child has predeceased the intestate, the lineal descendants of such child shall, subject to the provisions of clause (e), be entitled to the share which the child would have taken had he or she survived the intestate;

(c) grand-children of the intestate by a deceased child shall be entitled in equal shares to what such child would have taken had he or she survived the intestate;

Provided that where any such grand-child has also predeceased the intestate, the lineal descendants of such grand-child shall, subject to the provisions of clause (e), be entitled to the share which the grand-child would have taken had he or she survived the intestate;

(d) the property shall devolve in the like manner on the remoter surviving lineal descendants of the intestate;

(e) the descendants of a child, grand-child or other lineal descendant of the intestate shall not be entitled to any share in his property, if such child, grand-child or other descendant is living at the time of the death of the intestate;

(f) the widow, or, where there is more than one widow, all the widows together, shall be entitled to a share equal to that of a child, such share being taken equally by the widows where there is more than one;

(g) the mother shall be entitled to a share equal to that of a child.

(122)

105 E. Devolution of property, where there is no lineal descendant but there is a widow or mother.—(1) Where the intestate has not left him surviving any lineal descendant but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares.

(2) In the absence of a widow, the whole of the property shall devolve on the mother.

(123)

105 F. Devolution of property where there is no mother but there is a widow or lineal descendant of mother.—(1) Where the intestate has not left him surviving any lineal descendant or his mother but has left a widow or widows and also a lineal descendant or descendants of his mother, one-half of the property shall devolve on the widow or widows in equal shares and the other half on such lineal descendant or descendants.

(2) In the absence of any lineal descendant of the intestate's mother, the whole of the property shall devolve on the widow or widows in equal shares and, in the absence of the widow, the whole of the property shall devolve on the mother's lineal descendants.

(124)

105 G. Devolution where there is maternal grand-mother or her descendant or the father.—(1) Where the intestate has not left him surviving any of the heirs mentioned in sections 105C, 105E and 105F but has left his father and his maternal grand-mother or lineal descendant or descendants, one-half of the property shall devolve on his father and the other half on her maternal grand-mother or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any lineal descendant of the maternal grand-mother the whole of the property shall devolve on the father, and, in the absence of the father, the whole of the property shall devolve on the maternal grandmother or her lineal descendant or descendants, as the case may be.

(125)

105 H. Devolution in other cases.—(1) Where the intestate has not left him surviving any of the heirs mentioned in sections 105C, 105E, 105F and 105G, the whole of the property shall devolve on his mother's maternal grand mother, or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any such descendant, the whole of the property shall devolve on a remoter female ascendant of the intestate in the female line or, in her absence, on her lineal descendant or descendants, me nearer ascendant and her descendants, excluding the more remote ascendant and her descendants.

(126)

105 I. Rules for distribution among lineal descendants of mother or other ascendant.—The distribution of the intestate's property or any share thereof to which two or more lineal descendants of his mother or other ascendant are entitled under the forgoing sections shall be made in accordance with the rules specified in clauses (a) to (e) of section 105C, as if the mother or other ascendant had died intestate in respect of such property or share leaving her surviving the descendants aforesaid.

(127)

105 J. Special rules of succession to Nambudri males.—Notwithstanding anything contained in this Chapter, the separate or self-acquired property of a male Hindu who, if this Code had not been passed, would have been governed by the Nambudri law, shall, if he dies intestate in respect thereof, devolve in the order, and in accordance with the rules, specified below, namely:—

(a) where the intestate has left him surviving any lineal descendant or descendants or a widow or widows or both such descendant or descendants and a widow or widows, the whole of the property shall devolve on them in accordance with the rules specified in clauses (a) to (f) of section.

(b) where me intestate has not left him surviving any of me relatives referred to in clause (a) the property shall devolve in the order, and in accordance with the rules, specified in sections 97 to 108.

(128)

Intestate Succession to the property of female

General Provision

106. Heirs of a Hindu woman.—Except as otherwise expressly provided in sections 109A and 109B, the properly of a female Hindu dying intestate shall devolve, according to the rules set out in this Part,—

(a) firstly, upon the husband and children, including the children of any predeceased child, and

(b) secondly, if there is no heir specified in clause (a), then, upon the heirs specified in section 109 in the order named therein.

(129)

107. Division of shares among heirs.—(1) Where a Hindu woman dies-intestate leaving husband and children, the property of which she dies intestate shall be divided among her husband and children so that they share equally.

(2) Where a Hindu woman dies intestate leaving children but no husband, the property of which she dies intestate shall be divided among the children, so that they share equally.

(3) If any child of a Hindu woman dying intestate has died in her life time, leaving children alive at the time of her death, the children of such child shall take the share which such child would have taken if living at the intestate's death.

(130)

108. Husband succeeds where no children.—Where a Hindu woman dies Intestate leaving husband but no children, including children of any predeceased child entitled to succeed under section 107, the property of which she dies intestine shall devolve upon the husband.

Succession to the property of a Hindu woman

106. Heirs of a Hindu woman.—Subject to the provisions of this Chapter, the property of a Hindu woman dying intestate shall devolve— **Part II, sec. 14, page 9.**

(a) firstly, upon the husband and children, including the children of any predeceased child, and

(b) secondly, if there is no heir specified in clause (a), then, upon the heirs specified in section 109 in the order named therein.

(128)

107. Division of shares among heirs.—(1) Where a Hindu woman diesintestate leaving husband and children, the property of which she dies intestate shall be divided among her husband and children so that they share equally. **Part II, sec. 14, page 9.**

(2) Where a Hindu woman dies intestate leaving children but no husband, the property of which she dies intestate shall be divided among the children, so that they share equally. **Part II, sec. 14, page 9.**

(3) If any child of a Hindu woman dying intestate has died in her life time, leaving children alive at the time of her death, the children of such child shall take the share which such child would have taken if living at the intestate's death.

(129)

108. Husband succeeds where no children.—Where a Hindu woman dies Intestate leaving husband but no children, including children of any predeceased child entitled to succeed under section 107, the property of which she dies intestate shall devolve upon the husband.

(130)

(131)

109. Other heirs of the woman's property.—Where a Hindu woman dies leaving no heirs specified in section 107 or 108, then the property of which she dies intestate shall devolve upon the following heir in the order named hereunder, namely,—

(1) mother, father;

(2) husband's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife;

(3) mother's heirs, in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(4) father's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his daughter.

Part II, sec. 14, page 2.

109. Other heirs of the woman's property.—Where a Hindu woman dies leaving no heirs specified in sections 107 or 108, then the property of which she dies intestate shall devolve upon the following heir in the order named hereunder, namely,—

(1) mother, father;

(2) husband's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife;

(3) mother's heirs, in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(4) father's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his daughter.

(132)

Succession to the property of female Marumakkattayis, etc.

109A. Rules of succession to Marumakkattayam or Aliyasantana female dying intestate.—Notwithstanding anything contained in this Part, the separate or self-acquired property of a female Hindu, who if this Code had not been passed would have been governed by the Marumakkattayam or Aliyasantana law shall, if she dies intestate in respect thereof, devolve in the order and according to the rules specified below, namely:—

(a) where the intestate has left her surviving a lineal descendant or descendants, the whole of such property shall devolve on such descendant or descendants in accordance with the provisions contained in clauses (a) to (c) of section 105D;

(b) in the absence of any lineal descendants of the intestate, the whole of the property shall devolve on the intestate's mother or, in her absence, on her lineal descendant or descendants;

(c) where the intestate has not left her surviving any lineal descendant of herself or of her mother but has left her husband and her maternal grand-mother or her lineal descendant or descendants, one-half of the property shall devolve on her grand-mother or, in her absence, on her lineal descendant or descendants;

(d) in the absence of the intestate's maternal grand-mother and her lineal descendants, the whole of the property shall devolve on the intestate's husband, and in the absence of the husband, the whole of the property shall devolve on her maternal grand-mother or her lineal descendant or descendants, as the case may be;

(e) where the intestate has not left her surviving any of the heirs mentioned in the forgoing clauses, the whole of the property shall devolve on her mother's maternal grand-mother or in her absence on her lineal descendant or descendants and, in the absence of any one descendant, on a remoter female ascendant in the female line or, in her absence, on her lineal descendant or descendants, the nearer ascendant and her descendants excluding the more remote ascendants and her descendants ;

(f) the distribution of the intestate's property or any share thereof to which two or more lineal descendants of her mother or other ascendant are entitled under the foregoing clauses shall be made in accordance will the rules specified in clauses (a) to (e) of section 105D, as if the mother or other ascendant had died intestate in respect of such property or shall leaving her surviving the descendants aforesaid.

(133)

109B. Rules of succession to Nambudri female dying intestate.—Notwithstanding anything contained in this Chapter, the separate or self-acquired property of a female Hindu who, if this Code had not been passed, would have been governed by the Nambudri law, shall, if she dies intestate in respect thereof, devolve in the order, and in accordance with the rules, specified below, namely :—

(a) where the intestate has left her surviving any lineal descendant or descendants, the whole of the property shall devolve on such descendant or descendants in accordance with the rules specified in clause (a) to (e) of section 105D.

(b) in the absence of any lineal descendant, the property shall devolve on her husband;

(c) in the absence of the husband, the property shall devolve upon the heirs in the order, and in accordance with the rules, specified in section 109.

(134)

Succession to the property of a hermit

110. Rules for hermits, etc.—(1) Where a person completely and finally renounces the world by becoming a hermit or an ascetic or a perpetual religious student his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:

(a) In the case of a hermit upon a spiritual brother belonging to the same hermitage;

(b) In the case of an ascetic subject to any custom or usage governing the case, upon his virtuous disciple; and

(c) In the case of a perpetual religious student, upon his preceptor.

Succession to the property of a hermit

110. Rules for hermits, etc.—(1) Where a person completely and finally renounces the world by becoming a hermit or an ascetic or a perpetual religious student his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

Part I, sec. 11, page 9.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:—

(a) In the case of a hermit upon a spiritual brother belonging to the same hermitage,

(b) In the case of an ascetic subject to any custom or usage governing the case, upon his virtuous disciple; and

(c) In the case of a perpetual religious student, upon his preceptor.

(135)

General provisions relating to succession

111. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

* * * * * *

(136)

112. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Part, *per capita* and not *per stirpes ;* and

(b) as tenants-in-common and not as joint tenants.

(137)

113. Right of child in womb.—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

(138)

114. Presumption of survivorship.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

General provisions relating to succession

Part II, sec. 15, page 10.

111. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Illustration

(i) A brother by full blood is preferred to a brother by half blood; but a brother by half blood succeeds before a brother's son by full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by half blood is preferred to a paternal uncle's son by full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of rule 4 in section 104 is preferred although he is only related by half blood.

(135)

Part II, sec. 24, page 11.

112. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Part, *per capita* and not *per stirpes;* and

(b) as tenants-in-common and not as joint tenants.

(136)

113. Right of child in womb.—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

(137)

Part III-A, Divn. III, sec. 16, page 14.

114. Presumption of survivorship.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

(138)

(139)

115. Application of Partition Act, 1893, in certain cases.—Where, after the commencement of this Code, a share in any immovable property of an intestate or in any business carried on by such intestate, whether solely or in conjunction with other,—

(a) devolve upon one or more of the intestate's son, son's son, son's son's son, together with other relatives, and one of the heirs sues for partition, or

(b) devolves upon a daughter, together with any of the male relatives specified in Class I of the Eighth Schedule, and any one of such male relatives compels the daughter to take her share of the property of the intestate for separate enjoyment (which he is hereby empowered to do),

the provisions of the Partition Act, 1893 (IV of 1893) shall apply as if there was a partition and as if he or she were the transferee of a share of a dwelling house and the intestate's family, were an undivided one.

(140)

Disqualification of heirs

116. Hermit, etc., disqualified.—A person who has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 shall be disqualified from inheriting the property of any of his relatives by blood, marriage or adoption.

(141)

117. Unchaste wife disqualified.—A woman, who after marriage, has been unchaste during her husband's lifetime, shall, unless he has condoned the unchastity, be disqualified from inheriting his property:

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

(142)

118. Disqualification of certain widows remarrying.—The widow of a predeceased son, the widow of a predeceased son of a predeceased son, the father's widow and the brother's widow shall not be entitled to succeed as heirs, if on the date the succession opens, they have remarried.

115. Application of Partition Act, 1893, in certain cases.—Where, after the commencement of this Code, a share in any immovable property of an intestate or in any business carried on by such intestate, whether solely or in conjunction with others, devolves upon one or more of the intestate's son, son's son, son's son's son, together with other relatives, and one of the heirs sues for partition, the provisions of the Partition Act, 1893 (IV of 1893) shall apply as if there was a partition and as if he or she were the transferee of a share of a dwelling house and the intestate's family, were an undivided one.

Part II, sec. 12, page 9.

(139)

Disqualification of heirs

116. Hermit, etc., disqualified.—A person who has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 shall be disqualified from inheriting the property of any of his relatives by blood, marriage or adoption.

Part II, sec. 18, page 11.

(140)

117. Unchaste wife disqualified.—A woman, who after marriage, has been unchaste during her husband's lifetime, shall, unless he has condoned the unchastity, be disqualified from inheriting his properly:

Part II, sec. 19, page 1.

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

(141)

118. Disqualification of certain widows remarrying.—The widow of a predeceased son, the widow of a predeceased son of a predeceased son, the father's widow and the brother's widow shall not be entitled to succeed as heirs, if on the date the succession opens, they have remarried.

(New)

(142)

(143)

119. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

(144)

120. Convert's descendants disqualified.—Where, before or after the commencement of this Code, a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants arc Hindus at the time when the succession opens.

(145)

121. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Chapter, it shall devolve as if such person had died before the intestate.

(146)

122. Disease, defect, etc., not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Chapter, on any other ground whatsoever.

(147)

Escheat

123. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Part, such property shall go to the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

119. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder. **Part II, sec. 20. page 11.**

(143)

120. Convert's descendants disqualified.—Where, before or after the commencement of this Code, a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens. **Part II, sec. 20. page 11.**

(144)

121. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Chapter, it shall devolve as if such person had died before the intestate. **Part II, sec. 22. page 11.**

(145)

122. Disease, defect, etc., not to disqualify.—No person Part II, shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Chapter, on any other ground whatsoever. **Part II, sec. 23. page 11.**

(146)

Escheat

123. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Part, such property shall go to the Crown; and the Crown shall take the property subject to all the obligations and liabilities to which an heir would have been subject. **Part II, sec. 25. page 11.**

(147)

(148)

CHAPTER III

Testamentary succession

124. Testamentary succession.—(1) Any Hindu may dispose of by will or other testamentary disposition any property which is capable of being so disposed of by him in accordance with the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), or any other law for the time being in force and applicable to Hindus.

(2) Nothing herein contained shall authorise a Hindu—

(a) to deprive any person of any right to maintenance to which such person is entitled under the provisions of this Code or any other law for the time being in force;

(b) to create in property any interest or estate which he or she cannot lawfully create.

CHAPTER III

Testamentary succession

124. Testamentary succession.—(1) Any Hindu may dispose of by will or other testamentary disposition any property which is capable of being so disposed of by him in accordance with the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), or any other law for the time being in force and applicable to Hindus.

Part III, sec. 1. page 12.

(2) Nothing herein contained shall authorise a Hindu—

(a) to deprive any person of any right to maintenance to which such person is entitled under the provisions of this Code or any other law for the time being in force;

(b) to create in property any interest or estate which he or she cannot lawfully create.

(149)

PART VIII.—MAINTENANCE

125. Maintenance explained.—In this Part, the expression "maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; and

(ii) in the case of an unmarried daughter, also the reasonable expenses of, mid incident to, her marriage.

Personal liability to maintain members of family

126. Maintenance of wife.—(1) Subject to the provisions of this section, a Hindu wife, whether married before or alter the commencement of this Code, shall be entitled to be maintained by her husband during his life-time and alter his death, by his father.

(2) A Hindu wife may claim maintenance from her husband only if and while she lives with him:

Provided that she shall be entitled to live separately from him without forfeiting her claim to maintenance—

(a) if he is suffering from a virulent form of leprosy or has been suffering from venereal disease in a communicable form and not contracted from her;

(b) if he keeps a concubine in the same house in which his wife is living ;

(c) if he has been guilty of such cruelty as to render it unsafe for her to live with him;

(d) if he is guilty of desertion, mat is to say, of abandoning her without just cause and without her consent or against her wish;

(e) if he has ceased to be a Hindu by conversion to another religion;

(f) if there is any other cause justifying her living separately.

(3)A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

(150)

127. Maintenance of widowed daughter-in-law.—The obligation of a father-in-law to maintain his widowed daughter-in-law under section 126 only extends in so far as he has the means to do so and the widowed daughter-in-law is unable to maintain hereself out of her own property or to obtain maintenance from her husband's estate or from her son, if any, or his estate. Any such obligation shall cease on her remarriage.

PART VIII.—MAINTENANCE

Part III-A, sec. 3. page 2.

125. Maintenance explained.—In this Part, the expression "maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; and

(ii) in the case of an unmarried daughter, also the reasonable expenses of, mid incident to, her marriage.

Personal liability to maintain members of family

Part IV, sec. 26. page 19 and 20.

126. Maintenance of wife.—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Code, shall be entitled to be maintained by her husband during his life-time and after his death, by his father.

(2) A Hindu wife may claim maintenance from her husband only if and while she lives with him:

Provided that she shall be entitled to live separately from him without forfeiting her claim to maintenance—

(a) if he is suffering from a loathsome disease ;

(b) if he keeps a concubine in the same house in which his wife is living;

(c) if he has been guilty of such cruelty as to render it unsafe or undesirable for her to live with him;

(d) if he is guilty of desertion, that is to say, of abandoning her without just cause and without her consent or against her wish;

(e) if he has ceased to be a Hindu by conversion to another religion;

(f) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Part III-A, sec. 8, page 13.

127. Maintenance of widowed daughter-in-law.—The obligation of a father-in-law to maintain his widowed daughter-in-law under section 126 only extends in so far as he has the means to do so and the widowed daughter-in-law is unable to maintain herself out of her own property or to obtain maintenance from her husband's estate or from her son, if any, or his estate. Any such obligation shall cease on her remarriage.

(151)

128. Maintenance of children and aged parents.—(1) Subject to the provisions of this section, a Hindu is bound, during his life-time, to maintain his legitimate or illegitimate child and his aged parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father so long as he or she is a minor:

Provided that in the case of an unmarried daughter she may claim maintenance so long as she lives with her father and remains unmarried.

(3) A father may claim maintenance from his son if he is aged and infirm.

(152)

129. Maintenance of children by mother.—A Hindu woman is bound during her life-time to maintain her legitimate or illegitimate children if her husband is unable to do so and she has the necessary means to maintain them.

128. Maintenance of children and aged parents.— (1) Subject to the provisions of this section, a Hindu is bound, during his life-time, to maintain his legitimate or illegitimate child and his aged parents. **(New)**

(2) A legitimate or illegitimate child may claim maintenance from his or her father so long as he or she is a minor:

Provided that in the case of an unmarried daughter she may claim maintenance so long as she lives with her father and remains unmarried.

(3) A father may claim maintenance from his son if he is aged and infirm.

(151)

129. Maintenance of children by mother.—A Hindu woman is bound during her life-time to maintain her legitimate or illegitimate children if her husband is unable to do so and she has the necessary means to maintain them. **(New)**

(152)

(153)

Liability of heirs to maintain dependants out of estate

130. Maintenance of dependants.—(1) Subject to the provisions of section 131 the heirs of a deceased Hindu shall be bound to maintain the dependants of the deceased out of the estate inherited from the deceased by the heir.

(2) The following relatives of the deceased shall be deemed to be his dependants for the purposes of this Part, namely :—

(i) his father;

(ii) his mother;

(iii) his widow, so long as she does not remarry;

(iv) his son, son of his predeceased son, or son of a predeceased son of his predeceased son, who is a minor, so long he remains one, provided and to the extent that he is unable to obtain maintenance, in the case of a grandson, from his father's estate, and in the case of a great-grandson, from the estate of his father or father's father,

(v) his unmarried daughter, so long as she remains unmarried;

(vi) his married daughter;

Provided and to the extent that he is unable to obtain maintenance from her husband or from her son, if any, or his estate;

(vii) his widowed daughter:

Provided and to the extent that she is unable to obtain maintenance—

(a) from the estate of her husband, or

(b) from her son, if any, or his estate, or

(e) from her father-in-law or his father or the estate of either of them;

(viii) any widow of his son or of a son of his predeceased son, so long as she does not remarry:

Provided and to the extent that she is unable lo obtain maintenance from her husband's estate, or from her son, if any, or his estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(ix) his minor illegitimate son, so long as he remains a minor;

(x) his unmarried illegitimate daughter, so long as she remains unmarried.

Liability of heirs to maintain dependants out of estate

130. Maintenance of dependants.—(1) Subject to the provisions of section 131 the heirs of a deceased Hindu shall be bound to maintain the dependants of the deceased out of the estate inherited from the deceased by the heir.

Part III-A, sec. 5, page 12.

(2) The following relatives of the deceased shall be deemed to be his dependants for the purposes of this Part, namely:—

(i) his father,

(ii) his mother;

(iii) his widow, so long as she does not remarry;

(iv) his son, son of his predeceased son, or son of a predeceased son of his predeceased son, who is a minor, so long as he remains one, provided and to the extent that he is unable to obtain maintenance, in the case of a grandson, from his father's estate, and in the case of a great-grandson, from the estate of his father or father's father,

(v) his unmarried daughter, so long as she remains unmarried;

(vi) his married daughter;

Provided and to the extent that she is unable to obtain maintenance from her husband or from her son, if any, or his estate;

(vii) his widowed daughter:

Provided and to the extent that she is unable to obtain maintenance—

(a) from the estate of her husband, or

(b) from her son, if any, or his estate, or

(c) from her father-in-law or his father or the estate of either of them;

(viii) any widow of his son or of a son of his predeceased son, so long as she does not remarry:

Provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son, if any, or his estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(ix) his minor illegitimate son, so long as he remains a minor,

(x) his unmarried illegitimate daughter, so long as she remains unmarried.

(154)

131. Extent of liability of heirs to maintain dependants.—Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a male Hindu dying after the commencment of this Code, or

where, in a case of testamentary succession, the share so obtained by a dependant is less than what would be awarded to him or her by way of maintenance under this Part,

he or she is entitled, subject to the provisions of this Part, to maintenance from those who take the estate:

Provided that the liability of each heir shall be in proportion to the value of the share or part of the estate taken by him or her;

Provided further that no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would if the liability lo contribute were enforced become, less than what would be awarded to him or her by way of maintenance under this Part.

(155)

Amount of Maintenance

132. Amount of maintenance.—(1) In determining the amount of maintenance, if any, to be awarded to the wife, children or aged parents under this Part, regard shall be had to—

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately from the father, whether he or she is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings, or from any other source ;

(e) the number of persons who are entitled to maintenance under the provision of this Part.

(2) In determining the amount of maintenance, if any, to be awarded to a dependant under this Part, regard shall be had to—

(a) the net value of the estate of the deceased, after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect of the dependant;

(e) the position and status of the deceased and of the dependant;

(d) the degree of relationship between the two ;

(e) the reasonable wants of the dependants ;

(f) the past relations between the dependant and the deceased;

(g) the value of his or her property and any income derived from such properly, or from his or her own earnings, or from any other source;

(h) the number of dependants who are entitled to maintenance under the provisions of this Part;

(i) in the case of a widow, her conduct.

131. Extent of liability of heirs to maintain dependants.— Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a male Hindu dying after the commencement of this Code, or **Part III-A, sec. 4, page 12.**

where, in a case of testamentary succession, the share so obtained by a dependant is less than what would be awarded to him or her by way of maintenance under this Part,

he or she is entitled, subject to the provisions of this Part, to maintenance from those who take the estate:

Provided that the liability of each heir shall be in proportion to the value of the share or part of the estate taken by him or her;

Provided further that no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would if the liability to contribute were enforced become, less than what would be awarded to him or her by way of maintenance under this Part.

(154)

Amount of Maintenance

132. Amount of maintenance.—(1) In determining the amount of maintenance, if any, to be awarded to the wife children or aged parents under this Part, regard shall be had to— **Part III-A, sec. 6, page 13.**

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately from the father, whether he or she is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings, or from any other source ;

(e) the number of persons who are entitled to maintenance under the provision of this Part.

(2) In determining the amount of maintenance, if any, to be awarded to a dependant under this Part, regard shall be had to—

(a) the net value of the estate of the deceased, after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect of the dependant:

(c) the position and status of the deceased and of the dependant;

(d) the degree of relationship between the two;

(e) the reasonable wants of the dependants;

(f) the past relations between the dependant and the deceased;

(g) the value of his or her property and any income derived from such property, or from his or her own earnings, or from any other source;

(h) the number of dependants who are entitled to maintenance under the provisions of this Part;

(i) in the case of a widow, her conduct.

(155)

(156)

133. Amount of maintenance in the discretion of court.—(1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Part, with due regard to the considerations set out in sub-section (1) or sub-section (2) of section 132, as the case may be, so far as they are applicable.

(2) The expenses that may be allowed to an unmarried daughter in respect of her marriage shall in no case exceed the value of one-half of what she would have inherited from the deceased, if he had died intestate.

(157)

134. Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Code, may be altered subsequently, if there is a material change in the circumstances, justifying such alteration.

(158)

135. Debts to have priority.—Subject to the other provisions contained in this Part debts of every description shall have priority over the claims of dependants for maintenance under this Part.

(159)

136. maintenance when to be a charge.—A dependant's claim for maintenance under the provisions of this Part shall not be a charge on the estate of the deceased or any portion thereof, unless the same has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

(160)

137. Transfer where a third person is entitled to maintenance.—Where a third person has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the existence of such right, and in such a case the right can be enforced against the property to the extent to which it would have been liable had this Code not been passed.

133. Amount of maintenance in the discretion of court.—(1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Part, with due regard to the considerations set out in sub-section (1) or sub-section (2) of section 132, as the case may be, so far as they are applicable.

Part III-A, sec. 6(2), page 13.

(2) The expenses that may be allowed to an unmarried daughter in respect of her marriage shall in no case exceed the value of one-half of what she would have inherited from the deceased, if he had died intestate.

(156)

134. Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Code, may be altered subsequently, if there is a material change in the circumstances, justifying such alteration.

Part III-A, sec. 7(2), page 14.

(157)

135. Debts to have priority.—Subject to the other provisions contained in this Part debts of every description shall have priority over the claims of dependants for maintenance under this Part.

Part III-A, sec. 8, page 14.

(158)

136. maintenance when to be a charge.—A dependant's claim for maintenance under the provisions of this Part shall not be a charge on the estate of the deceased or any portion thereof, unless the same has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

Part III-A, sec. 9, page 14.

(159)

137. Transfer where a third person is entitled to maintenance.—Where a third person has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the existence of such right, and in such a case the right can be enforced against the property to the extent to which it would have been liable had this Code not been passed.

(160)

(161)

PART IX.—MISCELLANEOUS

138. Power to make rules.—(1) The State Government may make rules to carry out the objects of this Code.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(i) the particulars relating to *Dharmik* marriages which may be entered in the Hindu *Dharmik* Marriage Register and the manner in which and the circumstances under which such entries shall be made;

(ii) the cases and areas in which particulars of *Dharmik* marriages shall be compulsorily entered, and the punishment for any contravention thereof;

(iii) the areas for which Marriage Registrars shall be appointed and their duties and functions;

(iv) the manner in which Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Notice Books shall be kept and the manner in which notices of marriages under section 12 shall be published:

(v) the manner in which notices of applications under section 21 shall be given:

(vi) the fees payable for the solemnization of any civil marriage or for any other duties to be performed by the Registrar of Marriages:

(vii) the fees payable for the inspection of and for certified copies of extracts from the Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book:

(viii) the form in which and the intervals within which copies of entries in the Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book shall be sent to the Registrar Genial of Births, Deaths and Marriages;

(ix) *The person by whom, the form in which and the authority to which notice of any marriage under section 24A may he given ;*

(x) the particulars to be specified in applications for the recording of adoptions;

(xi) the fees payable for recording adoptions;

(xii) the form in which the Register of Adoptions shall be maintained; and

(xiii) the manner in which copies of entries in the Register of Adoptions may be certified.

(162)

139. Amendments and repeals.—The enactments mentioned in the third column of the First Schedule shall be amended to the extent specified in the fourth column thereof, and the enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

PART IX.—MISCELLANEOUS

138. Power to make rules.—(1) The Provincial Government may make rules to carry out the objects of this Code.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(i) the particulars relating to sacramental marriages which may be entered in the Hindu Sacramental Marriage Register and the manner in which and the circumstances under which such entries shall be made;

(ii) the cases and areas in which particulars of Sacramental marriages shall be compulsorily entered, and the punishment for any contravention thereof;

(iii) the areas for which Marriage Registrars shall be appointed and their duties and functions;

(iv) the manner in which Hindu Sacramental Marriage Register and the Hindu Civil Marriage Notice Books shall be kept and the manner in which notices of marriages under section 12 shall be published:

(v) the manner in which notices of applications under section 21 shall be given:

(vi) the fees payable for the solemnization of any civil marriage or for any other duties to be performed by the Registrar of Marriages:

(vii) the fees payable for the inspection of and for certified copies of, extracts from the Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book:

(viii) the form in which and the intervals within which copies of entries in the Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book shall be sent to the Registrar Genral of Births, Deaths and Marriages;

(ix) the particulars to be specified in applications for the recording of adoptions

(x) the fees payable for recording adoptions;

(xi) the form in which the Register of Adoptions shall be maintained; and

(xii) the manner in which copies of entries in the Register of Adoptions may be certified.

(161)

139. Amendments and repeals.—The enactment mentioned to the third column of the First Schedule shall be amended to the extent specified in the fourth column thereof, and the enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

(162)

(163)

FIRST SCHEDULE

(*See* section 139)

AMENDMENTS

Year	No.	Short title	Amendments
1	2	3	4
1872	III	The Special Marriage Act, 1872	1. In the preamble, the words "and for persons who profess the Hindu, Buddhist, Sikh or Jain a religion" shall be omitted, 2. In section 2, the words "or between persons each of whom professes one or other of the following religions, mat is to say, the Hindu, Buddhist, Sikh or Jaina religions" shall be omitted. 3. Sections 23, 24, * * * * * 25 and 26 shall stand repealed.

FIRST SCHEDULE

(See section 139)

AMENDMENTS

Year	No.	Short title	Amendments
1	2	3	4
1872	III	The Special Marriage Act, 1872.	1. In the preamble, the words "and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion" shall be omitted. 2. In section 2, the words "or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religions" shall be omitted. 3. Sections 23,24, except in so far as they effect succession to agricultural land in Governors' Provinces, and the whole of sections 25 and 26 shall stand repealed.

(164)

SECOND SCHEDULE

(*See* section 139)

REPEALS

Year	No.	Short title	Extent of repeal
1	2	3	4
		Central Acts	
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.	The whole, in so far as it, in its application to Hindus, is inconsistent with the provisions of this Code.
1923	XII	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole. * * * *
1929	II	The Hindu Law of Inheritance (Amendment) Act, 1929.	Do.
1937	XVIII	The Hindu Women's Right to property Act, 1937.	Do.
1946	XIX	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.	Do.
1946	XXVIII	The Hindu Marriage Disabilities Removal Act, 1946.	Do.
		State Acts	
1933	XXI	The Madras Nambudri Act, 1932	The whole except as provided in Parts V and VII.
1933	XXII	The Madras Marumakkattayam Act, 1932.	Do.
1949	IX	The Madras Aliyasantana Act, 1949.	Do.
(Kollom	year)		
1100	II	The Travancore Nair Act, 1100.	Do.
1100	III	The TravancoreEzhava Act, 1100.	Do.
1101	VI	The Nanjinad Vellala Act, 1101.	Do.
1106	III	The Travancore Malayala Brahmin Act, 1106.	The whole except as provided in Part VII.
1108	VII	The Travancore Kshatriya Act, 1108.	The whole except as provided in Parts V and VII
1115	VII	The Travancore Krishnavaka Marumakkathayee Act, 1115.	Do.
1107	VIII	The Cochin Thiyya Act, 1107.	Do.
1113	XXIX	The Cochin Nayar Act, 1113.	Do.
1113	XXXIII	The Cochin Marumakkathayam Act, 1113.	Do.
1114	XVII	The Cochin Nambudri Act. 1114.	The whole except as provided in Parts VII.
1115	XVII	The Cochin Makkathayam Thiyya Act, 1115.	The whole.

SECOND SCHEDULE

(See section 139)

REPEALS

Year	No.	Short title	Extent of repeal
1	2	3	4
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.	The whole, in so far as it, in its application to Hindus, is inconsistent with the provisions of this Code.
1928	XII	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole except in so far as it affects succession to agricultural land in Governors' Provinces.
1929	II	The Hindu Law of Inheritance (Amendment) Act, 1929.	Do.
1937	XVIII	The Hindu Women's Right to property Act, 1937.	The whole
1946	XIX	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.	Do.
1946	XXVIII	The Hindu Marriage Disabilities Removal Act, 1946.	Do.

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THIRD SCHEDULE

First Division

[*See* section 5(a)]

Sapinda Relationship

Column 1	Column 2
1. Daughter.	1. Son.
2. Daughter's daughter.	2. Son's son.
3. Son's daughter.	3. Daughter's son.
4. Daughter's son's daughter.	4. Son's son's son
5. Son's son's daughter.	5. Daughter's son's son.
6. Daughter's daughter's son's daughter.	6. Son's daughter's son's son.
7. Daughter's son's son's daughter.	7. Son's son's son's son.
8. Son's daughter's son's daughter.	8. Daughter's daughter's son's son.
9. Son's son's son's daughter.	9. Daughter's son's son's son-
10. Mother.	10. Father's
11. Sister.	11. Brother.
12. Sister's daughter (niece).	12. Brother's son.
13. Brother's daughter.	13. Sister's son.
14. Sister's son's daughter.	14. Brother's son's son.
15. Brother's son's daughter.	15. Sister's son's son.
16. Sister's daughter's son's daughter.	16. Brother's daughter's son's son.
17. Sister's son's son's daughter.	17. Brother's son's son's son.
18. Brother's daughter's son's daughter.	18. Sister's daughter's son's son.
19. Brother's son's son's daughter	19. Sister's son's son's son.
20. Mother's mother.	20. Father's father.
21. Mother's sister.	21. Father's brother.
22. Mother's sister's daughter.	22. Father's brother's son.
23. Mother's brother's daughter.	23. Father's sister's son.
24. Mother's sister's son's, daughter.	24. Father's brother's son's son.
25. Mother's brother's son's daughter.	25. Father's sister's son's son.
26. Mother's sister's daughter's son's daughter.	26. Father's brother's daughter's son's son.
27. Mother's sister's son's son's daughter.	27. Father's brother's son's son's son.
28. Mother's brother's daughter's son's daughter.	28. Father's sister's daughter's son's son.
29. Mother's brother's son's son's daughter.	29. Father's sister's son's son's son.
30. Father's mother.	30. Mother's father.
31. Father's sister.	31. Mother's brother.
32. Father's sister's daughter.	32. Mother's brother's son.
33. Father's brother's daughter.	33. Mother's sister's son.
34. Father's sister's son's daughter.	34. Mother's brother's son's son.
35. Father's brother's son's daughter.	35. Mother's sister's son's son.
36. Father's sister's daughter's son's daughter.	36. Mother's brother's daughter's son's son.

Column 1	Column 2
37. Father's sister's son's son's daughter.	37. Mother's brother's son's son's son.
38. Father's brother's daughter's son's daughter.	38. Mother's sister's daughter's son's son.
39. Father's brother's son's son's daughter.	39. Mother's sister's son's son's son.
40. Father's mother's mother.	40. Father's father's father.
41. Father's mother's sister.	41. Father's father's brother.
42. Father's mother's sister's daughter.	42. Father's father's brother's son.
43. Father's mother's brother's daughter.	43. Father's father's sister's son.
44. Father's mother's sister's son's daughter.	44. Father's father's brother's son's son.
45. Father's mother's brother's son's daughter.	45. Father's father's sister's son's son.
46. Father's mother's sister's daughter's son's daughter.	46. Father's father's brother's daughter's son's son.
47. Father's mother's sister's son's son's daughter.	47. Father's father's brother's son's son's son.
48. Father's mother's brother's daughter's son's daughter.	48. Father's father's sister's daughter's son's son.
49. Father's mother's brother's son's son's daughter.	49. Father's father's sister's son's son's son.
50. Father's father's mother.	50. Father's mother's father.
51. Father's father's sister.	51. Father's mother's brother.
52. Father's father's sister's daughter.	52. Father's mother's brother's son.
53. Father's father's brother's daughter.	53. Father's mother's sister's son.
54. Father's father's sister's son's daughter.	54. Father's mother's brother's son's son.
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55. Father's father's brother's son's daughter.	55. Father's mother's sister's son's son.
56. Father's father's sister's daughter's son's daughter.	56. Father's mother's brother's daughter's son's son.
57. Father's father's sister's son's son's daughter.	57. Father's mother's brother's son's son's son.
58. Father's father's brother's daughter's son's daughter.	58. Father's mother's sister's daughter's son's son.
59. Father's father's brother's son's son's daughter.	50. Father's mother's sister's son's son's son
60. Father's mother's mother's mother.	60. Father's father's father's father.
61. Father's mother's mother's sister.	61. Father's father's father's brother.
62. Father's mother's mother's sister's daughter.	62. Father's father's father's brother's son.
63. Father's mother's mother's brother's daughter.	63. Father's father's father's sister's son.
64. Father's mother's mother's sister's son's daughter.	64. Father's father's brother's brother's son's son.
65. Father's mother's mother's brother's son's daughter.	65. Father's father's father's sister's son's son

Column 1	Column 2
66. Father's mother's mother's sister's daughter's son's daughter.	66. Father's father's father's brother's daughter's son's son.
67. Father's mother's mother's sister's son's son's daughter.	67. Father's father's father's brother's son's son's son.
68. Father's mother's mother's brother's daughter's son's daughter.	68. Father's father's father's sister's daughter's son's son.
69. Father's mother's mother's brother's son's son's daughter.	69. Father's father's father's sister's son's son's son.
70. Father's mother's father's mother.	70. Father's father's mother's father.
71. Father's mother's father's sister.	71. Father's father's mother's brother.
72. Father's mother's father's sister's daughter.	72. Father's father's mother's brother's son.
73. Father's mother's father's brother's daughter.	73. Father's father's mother's sister's son.
74. Father's mother's father's sister's son's daughter.	74. Father's father's mother's brother's son's son.
75. Father's mother's father's brother's son's daughter.	75. Father's father's mother's sister's son's son.
76. Father's mother's father's sister's daughter's son's daughter.	76. Father's father's mother's brother's daughter's son's son.
77. Father's mother's father's sister's son's son's daughter.	77. Father's father's mother's brother's son's son's son.
78. Father's mother's father's brother's daughter's son's daughter.	78. Father's father's mother's sister's daughter's son's son.
79. Father's mother's father's brother's son's son's daughter.	79. Father's father's mother's sister's son's son's son.
80. Father's father's mother's mother.	80. Father's mother's father's father.
81. Father's father's mother's sister.	81. Father's mother's father's brother.
82. Father's father's mother's sister's daughter.	82. Father's mother's father's brother's son.
83. Father's father's mothers brother's daughter.	83. Father's mother's father's sister's son.
84. Father's father's mother's sister's son's daughter.	84. Father's mother's father's brother's son's son.
85. Father's father's mother's brother's son's daughter.	85. Father's mother's father's sister's son's son.
86. Father's father's mother's sister's daughter's son's daughter.	86. Father's mother's father's brother's daughter's son's son.
87. Father's father's mother's sister's son's son's daughter.	87. Father's mother's father's brother's son's son's son.
88. Father's father's mother's brother's daughter's son's daughter.	88. Father's mother's father's sister's daughter's son's son.
89. Father's father's mother's brother's son's son's daughter.	89. Father's mother's father's sister's son's son's son.
90. Father's father's father's mother.	90. Father's mother's mother's father.
91. Father's father's father's sister.	91. Father's mother's mother's brother.
92. Father's father's father's sister's daughter.	92. Father's mother's mother's brother's son.
93. Father's father's father's brother's daughter.	93. Father's mother's mother's sister's son.

Column 1	Column 2
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94. Father's father's father's sister's son's daughter.	94. Father's mother's mother's brother's son's son.
95. Father's father's father's brother's son's daughter.	95. Father's mother's mother's sister's son's son.
96. Father's father's father's sister's daughter's son's daughter.	96. Father's mother's mother's brother's daughter's son's son.
97. Father's father's father's sister's son's son's daughter	97. Father's mother's mother's brother's son's son's son.
98. Father's father's father's brother's daughter's son's daughter.	98. Father's mother's mother's sister's daughter's son's son.
99. Father's father's father's brother's son's son's daughter.	99. Father's mother's mother's sister's son's son's son.
100. Husband's brother's widow.	100. Husband's brother's son.
101. Husband's brother's son's widow.	101. Husband's father's brother's son.
102. Husband's brother's son's son's widow.	102. Husband's father's father's son.

**Sr. No. 100 to 102 added by Dr. Ambedkar in his own handwriting* -Ed.

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SECOND DIVISION

Degrees of Prohibited Relationship

[See section 5 (b)]

Column 1	Column 2
1. Mother.	1. Father.
2. Father's widow (step mother).	2. Mother's husband (step father).
3. Mother's mother.	3. Father's father.
4. Mother's father's widow (step grand-mother).	4. Father's mother's husband (step grand-father).
5. Mother's mother's mother.	5. Father's father's father.
6. Mother's mother's father's widow (step great grand-mother).	6. Father's father's mother's husband (step great grand-father).
7. Mother's father's mother.	7. Father's mother's father.
8. Mother's father's father's widow (step great grand-mother).	8. Father's mother's mother's husband (step great grand-father).
9. Father's mother.	9. Mother's father.
10. Father's father's widow (step grand-mother).	10. Mother's mother's husband (step grand-father).
11. Father's mother's mother.	11. Mother's father's father.
12. Father's mother's father's widow (step great grand-mother).	12. Mother's father's mother's husband (step great grand-father).
13. Father's father's mother.	13. Mother's Mother's father.
14. Father's father's father's widow (step great grand-mother).	14. Mother's mother's mother's husband (step great grand-father).
15. Daughter.	15. Son.
16. Son's widow.	16. Daughter's husband.
17. Daughter's daughter.	17. Son's son.
18. Daughter's son's widow.	18. Son's daughter's husband.
19. Son's daughter.	19. Daughter's son.
20. Son's son's widow.	20. Daughter's daughter's husband.
21. Daughter's daughter's daughter.	21. Son's son's son.
22. Daughter's daughter's son's widow.	22. Son's son's daughter's husband.
23. Daughter's son's daughter.	23. Son's daughter's son.
24. Daughter's son's son's widow.	24. Son's daughter's daughter's husband.
25. Son's daughter's daughter.	25. Daughter's son's son.
26. Son's daughter's son's widow.	26. Daughter's son's daughter's husband.
27. Son's son's daughter.	27. Daughter's daughter's son.
28. Son's son's son's widow.	28. Daughter's daughter's daughter's husband.
29. Sister.	29. Brother.
30. Sister's daughter.	30. Brother's son.
31. Brother's daughter.	31. Sister's son.
32. Mother's sister.	32. Mother's brother.
33. Father's sister.	33. Father's brother.
34. Father's brother's daughter.	34. Father's brother's son
35. Mother's sister's daughter.	35. Mother's sister's son.

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FOURTH SCHEDULE

(See section 12)

NOTICE OF MARRIAGE

To ..... a Registrar of Hindu Marriages under Part II of the Hindu Code for the ..... District.

We hereby give you notice that a civil marriage under Part II of the Hindu Code is intended to be solemnized between us within three calendar months from the date hereof.

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence
A B	Unmarried	Land owner	.....	.....	.....
	Widower				
	Divorcee				
C D	Spinster	.....	.....	.....	.....
	Widow				

Witness our hands, this ..... day of ....., 19

(Signed) A B

C D

THIRD SCHEDULE

(*See* section 12)

NOTICE OF MARRIAGE

To ..... a Registrar of Hindu Marriages under Part II of the Hindu Code for the ..... District.

We hereby give you notice that a civil marriage under Part II of the Hindu Code is intended to be solemnized between us within three calendar months from the date hereof.

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence
A B	Unmarried / Widower / Divorcee	Land owner	.....	.....	.....
C D	Spinster / Widow	.....	.....	.....	.....

Witness our hands, this ..... day of ....., 19

(Signed) A B

C D

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FIFTH SCHEDULE

(See section 17)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I. A B, hereby declare as follows:—

1. I am at the present time unmarried (or a widower, as the case may be).

2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).

3. I have completed ..... years of age.

4. I am not related to C D (the bride) within the degrees of relationship prohibited by Part II of the Hindu Code.

(And when the bridegroom has not completed the age of twenty-one years :

5. The consent of M N, my father (or guardian, as the case may be), has been given to a marriage between myself and C D, and has not been revoked.)

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) A B (the bridegroom).

DECLARATION TO BE MADE BY THE BRIDE

I, C D, hereby declare as follows:—

1. I am at the present time unmarried (or a widower, as the case may be).

2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).

3. I have completed ..... years of age.

4. I am not related to A B (the bridegroom) within the degrees of relationship prohibited by Part II of the Hindu Code.

(And when the bride has not completed the age of twenty-one unless she is a widow:

5. The consent of O P, my father (or guardian, as the case may be), has been given to a marriage between myself and AB, and has not been revoked.)

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) C D (the bride).

FOURTH SCHEDULE

(*See* section 17)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I. A B, hereby declare as follows:—

1. I am at the present time unmarried (or a widower, as the case may be).

2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).

3. I have completed ..... years of age.

4. I am not related to C D (the bride) within the degrees of relationship prohibited by Part II of the Hindu Code.

(And when the bridegroom has not completed the age of twenty-one years :

5. The consent of M N, my father (or guardian, as the case may be), has been given to a marriage between myself and C D, and has not been revoked.)

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) A B (the bridegroom).

DECLARATION TO BE MADE BY THE BRIDE

1. C D, hereby declare as follows:—

1. I am at the present time unmarried (or a widow, as the case may be).

2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).

3. I have completed years of age.

4. I am not related to A B (the bridegroom) within the degrees of relationship prohibited by Part II of the Hindu Code.

(And when the bride has not completed the age of twenty-one years unless she is a widow:

5. The consent of O P, my father (or guardian, as the case may be), has been given to a marriage between myself and AB, and has not been revoked.)

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) C D (the bride).

(contd.) 219

Signed in our presence by the above-named A B and C D. So far as we are aware, there is no lawful impediment to the marriage.

G H
I J } (three witnesses).
K L

(And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :

Signed in my presence and with my consent by the above-named A B and C D; M N (O P, the father (or guardian) of the above-named A B (or C D, as the case may be).

(Countersigned) E F,

Registrar of Hindu Marriages under Part II of the Hindu Code for the District of

Dated the ..... day of .....

Signed in our presence by the above-named A B and C D. So far as we are aware, there is no lawful impediment to the marriage.

G H
I J } (three witnesses).
K L

(And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:

Signed in my presence and with my consent by the above-named A B and C D; M N (O P) the lather (or guardian) of the above-named A B (or C D, as the case may be).

(Countersigned) E F,
Registrar of Hindu Marriages under Part II of the
Hindu Code for the District of

Dated the ..... day of

(171)

SIXTH SCHEDULE

(*See* section 19)

REGISTRAR'S CERTIFICATE OF CIVIL MARRIAGE

I, E F, certify that, on the ..... of ..... 19 , A B, and C D appeared before me and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, made the declarations required by Part II of the Hindu Code and that a marriage under the said Part was solemnized between them in my presence.

(Signed) E F,

Registrar of Hindu Marriages under Part II of the Hindu Code for the District of

(signed) A B
C D
G H
I J } (three witnesses)
K L

Dated this ..... day of. .....

FIFTH SCHEDULE

(*See* section 19)

REGISTRATR'S CERTIFICATE OF CIVIL MARRIAGE

I, E F, certify that, on the ..... of ..... 19 , A B, and C D appeared before me and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, made the declarations required by Part II of the Hindu Code and that a marriage under the said Part was solemnized between them in my presence.

(Signed) E F,

Registrar of Hindu Marriages under Part II of the Hindu Code for the District of

(signed) A B
C D
G H
I J } (three witnesses)
K L

Dated this ..... day of .....

(171)

(172)

SEVENTH SCHEDULE

(*See* section 21)

REGISTRATR'S CERTIFICATE OF *Dharmik* MARRIAGE

I, E F, certify that A B and C D appeared before me this day and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, declared that a *Dharmik* marriage was solemnized between them in a Hindu form on the …….. day of …….. 19 ……., and expressed their desire to have such marriage registered, and that in accordance with their desire, the said marriage has, this day, been registered under section 21 of Part II of the Hindu Code, having effect as such from the …….. day of …….. 19 ……., the date on which an application was made for the registration of their marriage under section 21 aforesaid.

The following children born to them after the solemnization of their marriage in the Hindu form as aforesaid shall be deemed to be, and always to have been, legitimate.

[Here enter the names of the children, in the order of their dates of birth, specifying against each child the date of his or her birth.]

(Signed) E F,

Registrar of Hindu Marriages under Part II of the Hindu Code for the District of

(Signed) A B

C D

G H } (three witnesses)

I J }

K L

SIXTH SCHEDULE

(*See* section 21)

REGISTRAR'S CERTIFICATE OF SACRAMENTAL MARRIAGE

I, E F, certify that A B and C D appeared before me this day and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, declared that a sacramental marriage was solemnized between them in a Hindu form on the ..... day of ..... 19 ....., and expressed their desire to have such marriage registered, and that in accordance with their desire, the said marriage has, this day, been registered under section 21 of Part II of the Hindu Code, having effect as such from the ..... day of ..... 19 ....., the date on which an application was made for the registration of their marriage under section 21 aforesaid.

The following children born to them after the solemnization of their marriage in the Hindu form as aforesaid shall be deemed to be, and always to have been, legitimate.

[Here enter the names of the children, in the order of their dates of birth, specifying against each child the date of his or her birth.]

(Signed) E F,
Registrar of Hindu Marriages under Part II of the Hindu Code for the District of

(Signed) A B
C D
G H
I J } (three witnesses)
K L

(172)

(173)

EIGHTH SCHEDULE

PREFERENTIAL HEIRS

Class I

(*See* section 98)

Son; widow: * *(a)* daughter; son of a predeceased son; widow of a predeceased son; son of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

Class II

(See section 98)

I. Father ; mother.* *(b)*

II. (1) Son's daughter, (2) daughter's son, (3) daughter's daughter.

III. (1) Son's daughter's son, (2) son's son's daughter, (3) son's daughter's daughter, (4) brother, (5) sister.

IV. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

V. (1) Brother's son, (2) sister's son, (3) brother's daughter and (4) sister's daughter.

VI. Father's father; father's mother.

VII. Father's widow; brother's widow.

VIII. Father's brother; father's sister.

IX. Mother's father; mother's mother.

X. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister, do not include references to a brother or sister by uterine blood.

*Corrected as (a) 'un-married daughter' and (b) ' married daughter' by Dr. Ambedkar in his personal copy.

SEVENTH SCHEDULE

PREFERENTIAL HEIRS

Class I

(*See* section 98)

Son; widow : daughter; son of a predeceased son; widow of a predeceased son ; son of a predeceased son of a predeceased son ; widow of a predeceased son of a predeceased son.

Class II

(*See* section 98)

I. Father; mother.

II. (1) Son's daughter, (2) daughter's son, (3) daughter's daughter.

III. (1) Son's daughter's son, (2) son's son's daughter, (3) son's daughter's daughter, (4) daughter's son's son, (5) daughter's son's daughter, (6) daughter's daughter's son, (7) daughter's daughter's daughter.

IV. Brother, sister.

V. (1) Brother's son, (2) sister's son, (3) brother's daughter and (4) sister's daughter.

VI. Father's father; father's mother.

VII. Father's widow; brother's widow.

VIII. Father's brother; father's sister.

IX. Mother's father; mother's mother.

X. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister, do not include references to a brother or sister by uterine blood.

●●

SECTION III

DISCUSSION ON THE HINDU CODE AFTER RETURN OF THE BILL FROM THE SELECT COMMITTEE

11th FEBRUARY 1949

TO

14th DECEMBER 1950

* HINDU MARRIAGES VALIDITY BILL

Pandit Thakur Das Bhargava (East Punjab : General): I move :

"That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahabir Tyagi, and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, in making this motion, with your permission, I will just state what the present condition of the law is. At present in all matters, Hindus, Sikhs and Jains are bound by the Hindu Law. In regard to marriage today according to the terms of the Hindu Law, a marriage between a man and a woman belonging to different castes is not valid except in Bombay where *anuloma* marriages are allowed but the *pratiloma* marriages are not allowed. In Allahabad, Madras and Calcutta, the High Courts have been pleased to hold that even the *anuloma* marriages are not valid.

As regards persons belonging to different religions, I should say here also the position is very indefinite. According to custom any marriage is allowed which may not be allowed according to the strict principles of the Hindu Law. For instance, in the Punjab even *karvari* and *chandradari* marriages are allowed, and though according to strict Hindu Law marriages between members of different Hindu communities are not allowed, by custom in many places such marriages are allowed. For instance, in Nepal such marriages are held to be valid. In the Punjab, which is not a caste-ridden Province, marriages between the Sikhs and Hindus have been held to be valid not by the courts but by the society in general. Their children have been allowed to inherit and they have been treated just as though the marriages have taken place according to law. As between Jains and Hindus previously no marriages used to take place, but at present the pendulum has swung the other way and marriages take place between Jains and Hindus, especially Jain Aggarwals and Hindu Aggarwals, but it is very doubtful if a Jain Aggarwal could marry validly a Shudra or a Brahman. As regards sub-divisions and sub-castes also, before the Act of 1946 was passed marriages between sub-divisions of the Hindu community were declared legal in some places and in others illegal.

* C.A. (Leg.) D., Vol. I, 11th February 1949, pp. 419-28.

But that is beside the point here. If sub-division and sub-caste is the same, then I am sorry to have used the word "sub-caste" here. The marriage between the members of the sub-divisions of the principal caste have already been legalised. In regard to the rest, for instance, if persons belonging to different religions and different castes want to marry, my humble submission is that according to the present law such marriages are not legal. At present, public opinion clearly demands that this must go and the marriage between persons of different faiths as well as of different castes should be made legal. At present there are many young men and women who want to marry beyond their castes. So far as public opinion goes, I am on sure ground that we are a solid rock of foundation for this measure.

Taking it from a national standpoint, may I humbly submit to the House that to resolve the present friction between Hindus and Sikhs in the Punjab and to make them one solidified people if hundred girls of Sikhs and Hindus were married to hundred boys of Hindus and Sikhs, the whole trouble would have gone. In fact, I believe that if the Hindus and Muslims had married with each other, this Pakistan would not have been brought about. If we adopt this inter-marriage as a system among ourselves, I am prefectly sure that all the bitterness between the castes and the bitterness between persons of different faiths would go away. I do not understand why we should not adopt this measure. It may be said that the true principles of Hindus Dharm stand in our way, we are not well advised in adopting contrary measures. May I humbly submit that the first *sloka* in Mahabaratha begins in this manner that because there are not many Kshatriyas in the land, therefore some Brahmins may be brought and asked to procreate Kshatriyas. All our religion and our Vedic lore do tell us that among Hindus such marriages were not infrequent. As a matter of fact, before the caste system became stereotyped, it can very well be imagined that there was no prohibition among the Hindus for intermarriage so far as caste was concerned. Therefore taking it from the radical point of view, I should understand that there is no special difficulty with regard to this measure.

But all the same, the point that I wish to make is that it is an enabling measure. It does not force any person to marry outside his caste. If a person so wishes, if a young man and a woman are so minded, if their parents are so minded, all I want is that the couple should be enabled to marry and their offsprings should be legitimate.

At present, if a Hindu wants to marry outside his caste, it is not as if he cannot effect his purpose by resort to falsehood. According to the Arya Marriage Validation Act he can very well marry any Hindu outside his caste. Supposing a person does not belong to Arya Samaj, why should he have recourse to falsehood to effect his purpose ? Therefore, the thing which the law should care about is that persons be enabled to do things in a legal manner. I also know that according to the provisions of the Special Marriage Act (Act III of 1872) it was possible for a Hindu to contract a marriage under its unamended provisions provided he declared that he was a non-Hindu while continuing to be a Hindu. A very nice paradox is given in the Hindu Code by H. S. Gour in para 457. This is what it says:

> "It will thus be seen that the Special Marriage (Amendment) Act has created a paradox. If the Hindu declares himself to be a non-Hindu and marries, he remains subject to Hindu Law. If he does not so declare, he ceases to be subject to Hindu Law, giving rise to a conundrum : When is a Hindu a non-Hindu ? The answer is : When he marries as a Hindu under the Special Marriage (Amendment) Act."

When the Act of 1923 was passed—I have read the proceedings of that time—it appears that Dr, Gour was driven to a corner and he had to accept a situation which would never have been accepted had he been free. According to the Special Marriage (Amendment) Act, the situation is very strange. If a person wants to marry outside his religion, say, a Hindu wants to marry a non-Hindu, then under the Amendment Act, "their previous rights are un-affected to the extent provided in the Caste Disabilities Removal Act." But yet what happens if they marry ? The disability which they will suffer from, I am going to describe from Gour's Hindu Law. "Their previous rights are unaffected to the extent provided in the Caste Disabilities Removal Act. They no longer possess the right of adoption. And if the person so marrying is an adopted son, his adoptive father may, if so chooses, make another adoption." So mat the poor man who wants to marry, his rights as an adopted son go away and his father is competent to have another adoption. Then, "such marriage has the effect of dissolving the joint family." This is another very great disability. If a person wants to marry a non-Hindu, he must cease to be a Hindu so far as the joint family is concerned. Then, " succession to their property and to the property of their issue is regulated by the Indian Succession Act." My humble submission is that there is no reason why we should undergo these disabilities. Why should a man wants to marry a non-Hindu suffer from these things, which go to show

that as a matter of fact he must renounce all the laws which are dear to him and which he has inherited from generations. This is a wrong provision and leads to fraud and many other evils. There is no doubt that from the old position the present position is a bit better. I know of cases in which Arya Samajists married before the Arya Marriage Validation Act was passed and for years together they did not declare themselves as husband and wife. They were afraid of declaring, and what would happen to their off-spring ? It may be said that at present the Hindu Code Bill is on the anvil, so where is the necessity for this measure at this stage ? I would beg of you to allow me to meet this point.

In the first place, may submission is, I do not know when the Hindu Code Bill will be passed. It is doubtful if it will be passed in this session, next session or some other session. We do not know. Secondly, if this Bill is accepted, it would pave the way for such of the provisions of the Hindu Law as are given there and so it will be a help to passing that law. What would happen to many people who would not marry on account of this law not being there ? Or if a person dies will his rights to property not be affected ? At the same time, if this Bill is not allowed to be passed into law, many cases which could be governed by this law will be governed by the present law and people will suffer. The whole nation shall suffer in so far as we will not be able to make for conditions which would go to solidify the nation and make it homogeneous.

It may be said, it is a case of piecemeal legislation. We all know many instances of such piecemeal legislation. We know that we passed in 1946 the Act relating to validity of marriages between subsection of castes and then we passed in Bombay, the prevention of Bigamous Marriages Act; and many other laws have been passed. I do not know of any other objections that may be raised to this Bill. It is a very small measure and this is a one-class Bill. All that it says is that previous marriages will be regarded as valid and in future such marriages will be valid. It does not propose to do anything else. I did not, as a matter of fact, venture to come before the House with a straight motion that it be passed into law because I am afraid it is a convention of this House that all these measures should be taken to the Select Committee.

I am anxious that in this session, we should be able to pass this measure into law, so that so far as the public is concerned, they will

feel convinced that we mean business and we want to evolve a classless society. I know what I am saying may not be liked. I was taken to task for expressing such an opinion in the papers an opinion which I read today to the House but in this vital matter, we are not to fear anybody. Mahatma Gandhi has told us we must have a class-less society. This is the right way to have a class-less society. All differences between those people who are opposed to each other from the point of view of social rights, economic rights and political rights, will disappear and we will have one class-less society, if we adopt a measure like this. I would beseech the House to kindly pass this measure in this session after referring it to the Select Committee today.

Mr. Deputy Speaker : Motion moved:

> "That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Anathasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahavir Tyagi and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The usual practice is to fix a date by which the report may be submitted to the House. With instructions to report by what date ?

Pandit Thakur Das Bhargava : By the end of this month, say the 28th of February.

Mr. Deputy Speaker : With instructions to report by the 28th of February, 1949.

Shri K. Hanumanthaiya (Mysore State): Sir, I have great pleasure in welcoming this Bill, Pandit Thakur Das Bhargava has advanced very good reasons in support of it. They hardly need any support or addition. Before August 1947, our watch-word was 'freedom' and Mahatma Gandhi gave us the phrase 'quit India' and after the attainment of freedom, Sardar Patel has given us the word consolidation. He is doing it on the political front and that is the greatest achievement that this country can boast of. (*Interruption*). And we have to do it also—may I say humbly with all sincerity and not with any levity—on the social front also. The great danger to India is 'disruptive tendencies', which are called communal tendencies and the marriage instruction is the bastion which keeps these various differences intact and in perpetuity. This measure in a very humble fashion makes a beginning to abolish those distinctions in times to come and consolidate the Hindu society to begin with. I heartily welcome

this measure and I suggest to the mover of this motion that he can take another Member into the Select Committee and I suggest Shrimati Annie Mascarene, M.A.B.L. being taken into the Select Committee.

Pandit Thakur Das Bhargava : I have no objection to add the name.

Shri K. M. Munshi (Bombay : General): I beg to support this motion. My honourable friend, Pandit Thakur Das Bhargava was pleased to describe this measure as a small measure. I beg to differ from him. It is a very big measure and a very important one. It should have been passed not now, but forty years ago. When the question was first raised before the courts and when the courts held in different provinces that marriage between the Hindus of different castes were invalid for one reason or the other. But in those days the Government benches were not prepared to allow the Hindu community to be dynamic and wanted to perpetuate the old customs which were enshrined in text books composed 700 or 800 years ago. I remember a case, Sir, I think it was some 40 years ago, when the validity of the marriage of a widow, whose husband had died several years ago was raised before the Bombay High Court and the High Court held that after long years of married life and leading case where I tried for four years to establish that the marriage bet-after having grand children, her marriage was invalid because she happened to belong to a higher caste than her husband. I was concerned in another leading case where I tried for four years to establish that the marriage between a Hindu of higher caste with a wife of a lower caste was invalid. But for the fact that Sir Lallubhai Shaw was a judge of catholicity, perhaps I would have won the case, but even then the validity of *anuloma* marriage as we call them,—between the husband of a superior Hindu caste and the wife of an inferior Hindu caste—is not accepted as valid in some of the provinces. The question has also risen with regard to Hindus and Jains in part of the country. Hindus and Jains marry freely, but the point has always come before the lawyers for opinion whether a marriage between a Hindu and a Jain was valid. Now these are questions which ought to have been solved, as I said, years and years ago. But we have reached a stage when this must be solved immediately.

My honourable friend, Pandit Thakur Das Bhargava referred to the special case of the Punjab. It is not a special case of any particular province; it affects the whole of the country. On account of education,

on account of freedom marriages between members of different castes take place. But they find themselves in great difficulty on account of this doctrine of Hindu Law. I know, not one or two, but dozens of cases where the parties merely profess to marry under the Civil Marriage Act, though they do not want to do it; they hated doing it; they do not want to disturb the joint family; they do not want that the succession Act should apply to them; they do not want to separate themselves from their parents; but because of the unfortunate state of the law, they have to marry under the Civil Marriage Act. Therefore, I submit, Sir, this a crying grievance which requires to be remedied as early as possible. I am glad that the mover has accepted your suggestion about the 28th of February and this Bill should be passed as early as possible.

There is one little point which I should like to mention and I am sure this deflect will be duly rectified in the Select Committee. The words as they stand are:

> Notwithstanding any text, rule, interpretation of Hindu Law, or any custom or usage to the contrary, no marriage among Hindus is or will he deemed to be invalid by reason of the fact that the parties thereto belong to different religions, castes or sub-castes.

This might lead possibly to a construction that this provision only applies to marriages between parties who are alive. I think it should be made perfectly clear that even marriages of this character which have taken place in the past and in respect of which the question of succession arises should be deemed valid hereafter. I am sure proper rectification will be made in the Select Committee. I therefore, Sir, heartily support this motion.

Shri Deshbandhu Gupta (Delhi): I rise to support the motion which is before the House just as my honourable friend, Shri Munshi has pointed out, I also feel that it is a really very important measure. For many years one tiling which has been standing in the way of Hindu solidarity and also in the way of our national solidarity is this division of the Hindu society in castes. I feel the time has come when we should pass a measure like this which seeks to abolish these artificial barriers without any further delay. I know of instances where some of my close friends who did not believe in civil marriages had to resort to civil marriages, simply because they happened to choose a mate which belonged to a different caste. You are aware, Sir, that the Arya Samaj has always been a believer in caste system by *'Guna* and *Karma'*. In spite of the fact that the founder of the Arya Samaj

preached that cult and from the very beginning they advocated that there was no caste by birth, Arya Samajists also had to suffer from the same disability from which other people are suffering today.

It was after many years of struggle that the Arya Marriage Validation Act was passed. But, I find public opinion amongst Hindu has also advanced sufficiently and not only Arya Samajists but today many more Hindus do not recognise the artificial barriers placed by the caste system based on birth. Therefore, there is no reason why they should be forced to have recourse to the Arya Marriage Validation Act or to the Civil Marriage Act. Today, when public opinion has advanced, and when the caste barriers that have stood in the way of the solidarity of the Hindus and in the way of creating a national feeling, have gone, I feel the passage of a measure like this should not be delayed.

There may of course be some point in saying that the Hindu Code is coming and therefore we should not have any piecemeal legislation. But along with many of my friends I too believe that a measure of this nature, which is in no way opposed to the reformist ideas contained in the Hindu Code, should not be delayed. Although, my honourable friend Dr. Ambedkar would like the Hindu Code to be passed into law this very session, many of us do not share that view. It may take time. After all, that is a very important measure and has got many controversial clauses. Therefore, I would urge that this measure should be welcomed by us and its passage should not be delayed.

I wholeheartedly support the motion moved by my honourable friend Pandit Thakur Das Bhargava and I hope Dr. Ambedkar will also accept it and that the house will pass this small measure which is of great importance to Hindu Society, in this very session.

Dr. Bakhshi Tek Chand (East Punjab : General): I wholeheartedly support the motion which Pandit Thakur Das Bhargava has made for referring this Bill to the Select Committee. The Bill has so far received support from various quarters of the House and I do hope that not a single discordant note will be raised against it.

The Bill, if I may say so, is no new measure. A Bill almost on identical terms was introduced in the old Imperial Legislative Council as it was then called, in 1919 by the late Mr. Vitthalbhai Patel. That Bill was circulated for opinion. Of course, different opinions were expressed, the orthodox element opposing it, officials opposing it and a number of persons and societies supporting it. But, before the Bill could come up for consideration before the Council, the Montagu

Chelmsford Reforms came into operation the council was dissolved and the Bill lapsed. After that, Dr. Gour attempted in 1923 to modify the old Bill of 1872 but then also, there was opposition and the Bill had to be modified in several particulars. It was only in the form of a civil marriage that persons of different castes or different sub-castes of Hindus could marry, sacramental marriages are not permitted. With regard to sacramental marriages under the Hindu Law, the position is different in the differnt provinces. Some provinces, as has been pointed out, permit what are called *Anuloma* Marriages ; other provinces do not allow that. In the latter provinces, the courts have held that though in some of the *Smiritis, Anuloma* marriages were permitted, they have become obsolete and they are not now recognised. In almost all Provinces, it is held that *Pratiloma* marriages are invalid. In the punjab and in some other provinces, where custom is the rule of decision, marriages between certain castes are allowed, but between certain other castes are not allowed. I think the time has now come when a bold step should be taken and this measure should be placed on the Statute book. No doubt, under the Hindu Code which is now before us, provisions to this effect have been made. The Hindu Code Bill is however a very comprehensive measure dealing with different subjects and covers a very much wider field. There is much opposition to some portions of it. We do not know how long it will take for the Bill to pass, in what form it will be passed, or whether it will be passed at all. (*Shri L Krishnaswami Bharathi*: "It will be passed.") It will certainly take time. There is no reason therefore, so far as this matter is concerned, to delay the passage of this simple measure, with which I think most people are aggreed. I therefore support the motion.

Shri Mahavir Tyagi (U.P.: General): I do also want to have the honour of recording my support to this Bill of great reform as my honourable friend Mr. Munshi has said .

It is long since india has suffered on account of communal differences. Marriages are the root cause and elections the 'fruit-cause' for all these differences; because, it is primarily at the time of the marriage that one enquires into the caste of the other. Every time when marriages are held, castes are enquired into. The next occasion, when the caste of a person is enquired into, is when one stands for election. Now that we have decided to have, joint electorates, we have to a great extent done away with the 'fruit-cause' of the communal

evil. Thus politically we have put ourselves on the right track. And as my friend Mr. Hanumanthaiya has just now said, the credit goes to the Honourable Sardar Patel for giving us political consolidation in the country. After this political consolidation, our next immediate need is to have social consolidation. This Bill will provide this need I am sure, if this Bill is passed into law, marriages will be free. I am a believer in free marriages. Now that India is free marriages must also be free and there should be no restrictions. I am sorry that the Bill has come at a very late stage in our lives: but let us pass this bill for our future generations to practice it. I hope that the country will enjoy the freedom given by this Act. I wholeheartedly support the motion.

Shri Upendranath Barman (West Bengal: General): I also beg to accord my whole hearted support to the Bill and its reference to the Select Committee. In my mind, I am convinced of one thing. The circumstance that stands in the way of our national sense is the caste barrier. So long as it lasts, the different sections of the Hindu community and other non-Muslim communities cannot unite together and imbibe a sense of nationality in its true sense. So long as one knows that he cannot marry his son or daughter with the son or daughter of his neighbour, the true sense that they are one cannot come. I think that by passing this measure that barrier will be won. It is the sense of kinship that is the real basis of national sense and I wholeheartedly support this Bill and I hope that it will be passed into law as soon as possible.

The Honourable Dr. B. R. Ambedkar (Minister for Law): With regard to this Bill, there cannot be any difference of opinion between myself and my honourable friend the mover for the simple reason that the Bill is merely a part of the Hindu Code which I am sponsoring. My only objection to the Bill is that the Legislature having accepted the principle that the Hindu Law ought to be codified, it is wrong now to proceed piece-meal with the legislation. I have no objection, as I said, to the principles underlying the Bill. In fact those are the very principles which are embodied in the Hindu Code and therefore what I will suggest to my honourable friend is that either he should withdraw this Bill or postpone the consideration of the Bill so that we may know exactly what happens to the Hindu Code.

I am afraid having regard to the fact that, I am sponsoring the Hindu Code and having regard to the fact that there being the motion

before the house for consideration of the Bill as reported by the Select Committee, I am afraid I cannot take any other attitude than the one I have taken.

Ch. Ranbir Singh *rose—*

Shri L. Krishnaswami Bharathi (Madras: General) : How can he be allowed to speak ?

The closure motion has been put.

Mr. Deputy Speaker: I allowed Dr. Ambedkar to speak and he is not the sponsor. The question was not put.

Ch. Ranbir Singh (East Punjab : General): (*English translation of the Hindi Speech*) Mr. Deputy Speaker, Sir, I have great pleasure in supporting this measure because I belong to that community amongst the Hindus who have always believed in the principle of mis Bill from the very outset. If there was any community amongst the Hindus which ever established relations outside its own sphere and that there existed no differences, it was the Jat community. It is true that there did exist some such element of difference and social ostracism but that was negligible. The very fact that this Bill will go a long way to establish throughout our country a principle in which we have believed since centuries past, affords me great pleasure to support this.

Secondly, just as my honourable friend Mr. Tyagi has stated, this will banish our mutual differences wliich were responsible for our slavery. By the integration of small states our leader the Honourable Sardar Vallabhbhai Patel has consolidated our country into one and that problem has been well solved. This Bill is a very good measure for solving our social problems.

So far as the Hindu Code Bill is concerned that is a big thing, It is not yet known whether or not the country or this House accepts it. It contaias some provisions over wliich our leaders have expressed some sort of difference. I, therefore, fail to understand how far it is correct to shelve or reject this Bill simply for the reason mat it forms part and parcel of that Bill, because if the Hindu Code Bill is passed, this measure will naturally be incorporated in it. If that is not passed, this Bill will at least have chances of being passed.

With these words I whole-heartedly support this.

Shri K. M. Munshi : Is it permissible for me to answer a point made by Dr. Ambedkar ?

An Honourable Member: Pandit Bhargava can deal with it.

Pandit Thakur Das Bhargava : Sir, I am very glad that all sections of the House have supported this measure. It is a measure of such a kind that I could not foresee with the highest flight of imagination that any sort of objection could be raised and I am very glad that this measure is liked by everybody. One objection has been raised and that is that since the Hindu Code Bill is on the anvil therefore, we should not proceed with this Bill. If the principles of this Bill and the principles which are the subject matter of the Hindu Code were antagonistic to each other, I could understand the objection, but where this measure proceeds on the same basis as the Hindu Code Bill, if we pass it in advance, it will really pave the way for the passing of the Hindu Code. I cannot understand how the passing of this will obstruct the passing of the Hindu Code—really it will accelerate its passage. May I enquire where is the law or rule or convention that if a Bill like the comprehensive Hindu code Bill is on the anvil therefore another Bill cannot be passed. There is no such convention. I cannot understand that if a measure is there which covers one of the points covered by another measure, therefore the second measure should not be passed.

Bakshi Tek Chand has pointed out that this measure was a subject matter of a Bill in 1919 and this measure is associated with the name of our revered President V. J. Patel. Now in point of time I think so far as Hindu Code is concerned, this kind of measure is much anterior. In a matter of this kind, these technicalities even if they be valid, should not be allowed to stand. What would happen to those thousands of men and women if this Hindu Code Bill is not passed and I think it is not going to be taken clause by clause this session and it may go on to September or October and not passed in this Session because it is a controversial measure and it may take a year; what would happen to those young men and women who desire to marry according to the provisions of this Bill and our activities which certainly conduce to the formation and consolidation of one nation ?

Sir, it is not a matter of joke. I am only helping Dr. Ambedkar whose marriage also will be legalised by this Bill. Why should he laugh at this ? This may or may not be applicable to him yet the disabilities if any will be removed. I know hundreds of people want to marry under this and is it wrong to marry under this rule ? I for one deprecate that anyone should place any obstacle to this Bill being

passed in this session. If this measure is not passed in this Session all our efforts and Gandhiji's efforts will be futile. So my submission is this and I beg Dr. Ambedkar to kindly withdraw his objection and agree to the passage of this Bill as soon as possible because this would also help him in getting this relevant portion of the Hindu code passed.

Shri K. Hanumanthiya: Has the honourable member accepted the name of Shrimati Annie Mascarene which I have suggested ?

Mr. Deputy Speaker: Yes, I suppose the honourable the Law minister wants to know the number of men on the waiting list.

The question is :

> "That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardur Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakhshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahavir Tyagi, Shrimati Annie Mascarene, and the Mover, with instructions to report by the 28th February 1949, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

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*HINDU CODE—contd.

Mr. Speaker : The honourable Dr. B. R. Ambedkar.

Pandit Thakur Das Bhargava—*rose.*

Shri Jaspat Rai Kapoor (U. P. : General): Mr. Speaker, Sir, I have to raise a point of order which, if accepted, will bar any further discussion on the point of order raised in the previous session by my honourable friend Mr. Naziruddin Ahmad. I therefore, submit that I be permitted to place my point of order for your consideration.

Mr. Speaker : As Pandit Thakur Das Bhargava was on his legs, I think I ought to hear him first. I do not anticipate what he is going to say; I have my own views on the point of order raised but I will consider what Pandit Thakur Das has to say,

Pandit Thakur Das Bhargava (East Punjab : General): Sir, on the last occasion when the motion was made by the Honourable Dr. Ambedkar, Mr. Naziruddin Ahmad took a point of order on the point that the Bill considered by the Select Committee was not the

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* C.A. (Leg.) D., Vol. I, Part II, 17th February 1949, pp. 614-21.

Bill referred to it by the House. While that point was being considered. I was submitting for your consideration some grounds why the point of order was of great substance. While that was being done, you were pleased to stop the discussion and shorten the matter, as would appear on page 778 of me Proceedings, dated 31st August 1948. At that time, Sir, you were pleased to tell us what was passing in your mind and you told us that you will consider at the proper time two or three questions which are given on page 779 of this report. The two questions which seemed to agitate your mind were, firstly, whether the Select Committee went out of its way and went beyond the scope, and secondly, whether the Select Committee has gone beyond the scope of the reference. These were the two questions. The debate was taking place when ultimately you decided as given on page 780, that you would study all the facts and then give a ruling. With regard to that, I beg to lay some points for your consideration in regard to the point of order raised by Mr. Naziruddin Ahmad.

Mr. Speaker: As I see from the report, what I stated there was this—I have not got the printed report but I have got the proof-sheets here. After the Honourable member Shri Biswanath Das had raised a point, I stated as follows :—

> "As I said, I am not deciding this matter at all. I am keeping open the whole thing including the point of order, because it will be seen that it involves large questions of fact and I must study all these things myself, which I have not yet done. Shall I leave the matter as it is ?

Therefore, I left it for me to study it and I can now say that I have studied it. Whatever may have been said by honourable members with reference to the point of order, I have studied the report of the Select Committee, I have studied the first Bill and I have studied, of course, the other draft which was alleged to have come before the Select Committee. If the honourable member has to say anything with reference to that he may.

Pandit Thakur Das Bhargava : It is only with reference to that that I propose to speak just now. As a matter of fact, I also raised this very point of order, but Mr. Naziruddin was more fortunate in catching your eye. Therefore, I have something to say on this point.

Shri Mohan Lal Gautam (U. P. : General): On a point of order to this point of order, Sir, according to the Rules of Procedure, I do not find any provision for any point of order after a report has been presented to this House. I would request the honourable member to

quote that rule so that I may consult it and see for myself whether the point of order raised by the honourable member is not out of order.

Mr. Speaker : These are obvious matters which need not be argued. If we differ on the substance of the matter, let us devote time to that substance rather than take up the time in the technicalities of the matter. If people are against the Code then it is a matter of substance. If they are in favour of it, even then it is a matter of substance. But let us not take the time of the House in technicalities.

Subsequently, the point of order mentioned was that the Bill which was referred to the Select Committee was, on facts, not the Bill which the Select Committee considered and that therefore the report is based on something else. That is the point of order, put in short, and on that point of order arguments were addressed. If the honourable member Pandit Bhargava has to address or speak on facts, matters would stand differently; the matter is, I believe, covered amply by what Mr. Naziruddin Ahmad has stated. Has he to invite my attention to any other facts ?

Shri Jaspat Roy Kapoor : May I respectfully request you, Sir to permit me to place my point of order before, you ? It relates to the competency of this House, in the present session, to deal with this question at all; also, whether the point of order raised by my friend Mr. Naziruddin should be discussed in this session at all ? For, if my point of order is accepted it will shut out all discussion on the subject in the present session.

Mr. Speaker: I think I will go step by step. Let the first point of order be disposed of. Assumsing that the first point of order goes in favour of the Bill, then the second point of order which the honourable member has raised is competent and therefore he may raise the point later on.

Shri Jaspat Roy Kapoor : My submission is that even the discussion of the point of order raised by Mr. Naziruddin Ahmad is a point which should be considered by this house and the question is whether it is competent to discuss the subject at all.

Mr. Speaker: I do not agree that I should take that point first. It will be for the Chair to decide whether the Select Committee considered the Bill that was referred to it or something else, and whether, therefore, its report should or should not be taken into

consideration. After that is decided, it is perfectly competent for the honourable member to point out to me any points or any law or any practice by which this House is not competent to take into consideration the present Bill. That is the better way. Let us save time.

Shri Jaspat Roy Kapoor: May I say one word, Sir ?

Mr. Speaker: No, no Pandit Bhargava.

Pandit Thakur Das Bhargava : Sir, I only propose to lay before you some facts and some law as it would apply to those facts. For instance, I beg to point out that the proceedings before the Select Committee was an abuse of the rules of this House. The privilege of this House has been violated by the Select Committee and by the procedure of the Law Department. Secondly, if my facts are correct, another Bill was considered and not the Bill which was referred to it by the House. The question which arises then would be a question of law, whether such a procedure was justified and whether this House should consider this report as a report on this Bill which was referred to the Select Committee or whether it is a document which is not valid in law and is not a legal document. I will therefore confine myself to the two types of questions which I submit are quite related. In regard to the substance also, with your permission, I will subsequently have something to say provided your ruling is that this question is also relevant. In my humble opinion, the question divide itself into two parts. Number one, whether the report which has been presented to the House is a good report from the procedural point of view. Number two, whether the report has gone beyond the scope of the Bill. I propose to address the House on the second question subsequently.

First of all, with your permission, I will address the House on the first question before laying certain facts before the House. My humble submission is that according to what we have got in the Select Committee's report and from the papers which have been circulated to us and which are found in the Library, I have come to the conclusion that after the Bill was referred to the Select Committee, the Law department just substituted another Bill for this Bill, and this Bill was considered by the Select Committee. I do not know whether these facts are absolutely correct, but I have consulted some members who were in the Select Committee and they have informed me about it and at the same time from the report of the Select Committee also it appears that as a matter of fact . . . . .

Mr. Speaker : I am afraid the honourable member is practically repeating what the honourable member Mr. Naziruddin Ahmad has said. It is the same thing. I have gone through the report myself bearing in mind the points raised and while I would like to give the honourable member the fullest liberty to place any other facts not included in Mr. Naziruddin Ahmad's speech, I do not think we should go into the same repetition

Pandit Thakur Das Bhargava: I do not like to repeat. I only want to know if these facts are taken to be correct. If ultimately another honourable member gets up and says these facts are wrong, then the whole argument would fall down. Therefore, I want to place before you how I have come to the conclusion that these facts are correct. If you take them as correct, I do not want to trouble the House and your goodself. I submit that as a matter of fact it appears from the report of the Select Committee itself that the substituted Bill was alone considered, because from the majority committee's report as well as the dissentient's report it appears that no other Bill was considered and the Bill which was referred to the Committee was not at all considered.

Now, Sir, Dr. Ambedkar has kindly placed before us a comparative statement. If you will kindly see these tables, there are two parts, one shows how from this Bill the original Bill was different. He has given another table showing the difference between the Draft Bill and the Select Committee report. This also shows that only the re-drafted Bill was considered and not the original Bill. Any way, taking this to be the right tiling, if it is accepted that the re-drafted Bill was only considered, the question arises before you whether the re-drafted Bill could be considered by the Select Committee or not, and if this action of theirs is not tantamount to the breach of privileges of this House as well as abuse of the powers that this House granted to the Select Committee. Now, Sir, I may not be taken to say that there was any wrong motive behind it; such a course may have been intentional or non-intentional; it may have been done with the best of motives or with the worst of motives; I am not concerned with that. I am concerned with one central fact that the original Bill which this House referred to the Select Committee was never considered by the Select Committee.

The Honourable Shri K. Santhanam (Minister of State for Railways and Transport): On a point of order, I wish to know whether this House can go into the manner in which a Select Committee has

dealt with a Bill. In that case, it would require verbatim reports of all proceedings in a Select Committee. We can reject the report or accept the report or do anything with the report but how the Select Committee dealt with it is a matter which, I think is not relevant and it is not the practice of the House either to go into it. Otherwise, every future Select Committee will have to give us a verbatim record of its proceedings, so that we can judge of the propriety. . . .

Mr. Speaker : I am afraid various points of order are being raised and stated too widely. As regards the present point, if the position is that the Bill which was sent by this House was not considered at all by the Select Committee, I think it would be perfectly competent to go into the question as to whether the Select Committee did or did not consider. Then the question will arise as to how far it would be permissible to go into the proceedings of the Select Committee and to that my present reaction is that this House or myself will not be sitting as a fact-finding committee or court, but we shall take into consideration—we are entitled to take into consideration—what the Select Committee itself has stated in its report, and therefore, the matter will be more or less one for inference—coming inferentially to some conclusion as to what the Select Committee did and not by taking evidence of every member of the Select Committee and taking extra evidence. Now, I may point out to my friend Pandit Bhargava, that in spite of all that he has said the argument is not being advanced any further. Whether you call it a breach of the privileges of the House or abuse of procedure, the argument, in short, comes to this—that the Select Committee considered a substitute Bill; that it did not consider the original Bill sent by this House, and that this conclusion is based on certain remarks or observations in the Select Committee report—majority as well as the minority report—and therefore he infers—to state more correctly—from these documents that the original Bill was never considered. That, in short, is the point of order. The question of breach of privilege or abuse of procedure will arise, if we come to the conclusion that the Select Committee did as he infers, but if we come to the conclusion that the Select Committee was not guilty in the manner in which he infers it to be, then the question of breach of privilege or abuse of procedure does not arise at all. I can assure honourable members that I have carefully gone through every point that the honourable member is going to read from the report of the Select Committee and, perhaps, something more also,

and I have my own conclusions about it. I think I can make the whole thing short by stating what I have felt about the Bill and decide the matter rather than take up the time of the House. That is my feeling in the matter. (*Some Honourable Members:* "Quite so, Sir.") Anyway, we are not going to finish this Bill today. We can just clear the ground and I think without further going into arguments, I may perhaps . . . .

Pandit Thakur Das Bhargava: I do not want to go further into arguments after having heard from you how things have taken place, but I do wish to place before you some of the ruling which I have got which go to show that this Bill as emerging out of Select Committee is abosultely unwarranted, illegal and vitiates the entire report of the Committee and before the House there is no report at all. This is my submission. If you will permit, I will place some rulings before you.

Mr. Speaker: However, the rulings follow certain facts. In this case, it is alleged that, as a matter of fact, the Select Committee have failed to consider the original Bill. If that is established, then we shall have ample time to consider the rulings.

Pandit Thakur Das Bhargava: Nobody is denying this fact.

Mr. Speaker : That is just the point, as the honourable member will see. When I give my ruling which I have carefully prepared after reading all the papers. If any further points arise after the facts as stated by me are accepted, then those points of order may be considered.

Shri M. Tirumala Rao (Madras : General): Before you give your ruling, is there no other method of knowing the truth except by inference ?

The Honourable Dr. B. R. Ambedkar (Minister for Law): May I, with your permission, intervene for a minute to correct an impression which my friend Pandit Bhargava has sought to create in this House that the original Bill which was referred by this House to the Select Committee was never before the Select Committee ? I mink it is a gross mis-representation. If my honourable frined were to refer. . . . .

Mr. Speaker : I have myself studied the position in great details. I shall clarify it by reading out my decision.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): I have additional facts.

Mr. Speaker: Order, order.

Pandit Mukut Bihari Lal Bhargava: There is one additional fact which has not come to the notice of the Chair. I wrote a letter to the Law Department to find out whether any re-drafted Bill was printed. The information given to me was that only a few copies were printed and they were available in the library of the House. I have referred to that Bill and it is a fact that a re-drafted Bill was printed in July 1948 prior to the meeting of the Select Committee. That Bill was considered clause by clause by the Select Committee and that is the Bill that has emerged from the Select Committee with its report. The report mentions this. Therefore my respectful submission is that that re-drafted Bill may be taken into consideration to find out whether the Select Committee applied its mind to the Bill that was referred to it or some other re-drafted Bill that was printed under the signature of Dr. Ambedkar, after scrutiny of the original Bill and absolutely in a different form. That is a very important material and additional fact which I respectfully bring to the notice of the Chair before the ruling is given.

Pandit Thakur Das Bhargava: I have got a copy of that Bill with me.

Mr. Speaker: I have some facts which honourable members do not have.

The Point of Order that the Honourable the Law Minister's motion for consideration of the Select Committee Report on Hindu Code is incompetent as raised by the honourable member Mr. Naziruddin and supported by a few other members on 31st August 1948, is based on a narrow limit of facts. The objection raised is presented as a chain of reasoning in the following form :

> "What the Select Committee considered was a 'substitute' of the original Bill in the form of 'a revised draft'. Therefore the Select Committee did not consider the Bill referred to it, but 'a new document', and the present report of the Select Committee, being a report on a new document, there is no Select Committee Report on the original Bill. The Honourable the Law Minister's motion for consideration of the Bill, as it emerged from the Select Committee, is, therefore, incompetent". That is the substance of the Point of Order. (*Shri Mahavir Tyagi:* "Is that your ruling ?") I believe I have stated the point correctly.

None of the members, Mr. Naziruddin Ahmad, Pandit Thakur Das Bhargava and Srijut Biswanath Das, who raised or supported the Point

of Order, were members of the Select Committee and naturally, therefore, have no personal knowledge as to what was considered at the meetings of the Select Committee. They, therefore, relied upon some statements in the report of the Select Committee and inferred that the original Bill, as referred to the Select Committee, was not taken into consideration by them.

The question thus raised is purely a question of facts, namely, whether the Bill referred to the Select Committee, meaning thereby the various substantive provisions thereof, as distinct from the form or sequence in which they were put, were or were not considered by the Select Committee; whether the Select Committee did or did not apply their mind to the substantive provisions of the Bill as referred to them.

It is not disputed that the Select Committee had a right to add, to or to delete from or to improve upon the provisions of the Bill as referred, provided the additions, deletions or improvements, etc. suggested by the Select Committee are within the scope of the Bill I need not therefore, enter into this aspect, as no such question about the Select Committee having gone beyond the scope of the Bill is raised before me.

I may now examine, in the light of the written as well as oral evidence before me, the statement of facts as formulated by the honourable members who have raised the Point of Order.

I may shortly state the facts as to how the Bill that was introduced came to be framed. As stated in the Statement of Objects and Reasons, the Central Government, by their Resolution dated the 20th January 1944, 'appointed a Hindu Law Committee for the purposes of formulating a Code of Hindu Law, which should be complete as far as possible.' This was done in pursuance of 'a growing public opinion in the country in favour of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu Society'. It was also felt that, in view of the 'present conditions and trends in Hindu Society' there is a great need to alter the law so as to make it fit the new pattern, to which the Hindu society seems to be rapidly adjusting itself.'

When the motion for reference of the Bill to the Select Committee was carried on 9th April 1948, there was hardly any time for honourable members to express themselves on the substance as well as the form

and the drafting of the Bill. The Ministry of Law, having felt that the Bill 'as drafted by the Hindu Law Committee did not conform to the canons of a Code', decided to revise the draft of the Bill and to remove those defects, so as to enable one to have 'a full and complete picture of the provisions of the Code'. They, therefore, undertook the task of re-arranging the parts and divisions of the original Bill in consecutive sections and in a logical sequence, and also made some further suggestions as they thought proper for consideration by the Select Committee. The Ministry of Law simply placed before the Select Committee a sort of a proper form in which the original Bill could have been shaped by the Select Committee themselves at their meetings or they could have directed the draftsmen to carry out the changes.

It may be noted here that, while circulating the Code in a revised form, the Ministry of Law supplied to the members of the Select Committee an index also giving therein, for facility of reference, the place of a section in the revised Code with the corresponding section in the original Bill, as prepared by the Hindu Law Committee. The members of the Select Committee had thus before them, at all times and at every stage, the provisions of the Code as contained in the original Bill. The Ministry of Law further invited the attention of the members of the Select Committee to changes of substance suggested by them in the revised draft. It was, therefore, clear that at all stages of deliberations by the Select Committee of the provisions of the Bll, both the revised and the original were before them and the deliberations had proceeded on a comparative study of the original provisions and the provisions contained in the revision as suggested by the Ministry of Law.

Coming to the question of evidence as to the above facts, the only member of the Select Committee who spoke with reference to the Point of Order was, Pandit Balkrishna Sharma. Pandit Balkrishna Sharma stated in the House: "The Bill which the House asked us to consider was always before us." The evidence on record consisting of the main report, as also the dissenting minute, amply support this statement. The honourable members, who have raised this objection, relying upon passages in the Select Committee Report or the Dissenting Minutes seem to take certain passages out of the context and by themselves. This is what the main report says:

> "We, the undersigned, having considered the Bill"—not the revised draft— "have now the honour to submit etc." This is how they begin the Report.

They speak of having considered the Bill and not the revised draft. But further they say as follows :—

> "The Draft Hindu Code, as introduced in the Legislature did not receive any departmental scrutiny prior to its introduction and the Ministry of Law have now produced a revised draft, which, in our opinion, is more satisfactory in several respects. This revised draft does not make any substantial changes in the body of the original Bill, but within the framework of the original Bill, it has recast it so as to be in the form in which Bills are usually presented to the Legislature."

So it will be clear that the Select Committee had applied their mind to the original Bill and had come to the conclusion that there was revision thereof, not in substance but in respect of the form only.

They also mention the reasons why they considered the revised draft as better than the original one, and then they say:

> "Consequently we decided to confine our deliberations to the revised draft of the Bill."

The word "consequently" is important. Having seen the substantive provisions of the original Bill and the revised draft, it was natural and more appropriate to deliberate on the revised draft, which was nothing else than the substance of the original Bill in an improved form. The Select Committee further say :

> "References are given in the margin to each section indicating the corresponding section in the original Bill."

This is a further cogent proof that, though their deliberations were confined to the revised draft for finalising their conclusions, they had before them the view of each and every clause of the original Bill. This is made further very clear in the notes on clauses in which they deal with various parts and clauses of the Bill and state with reference to each part or clause the corresponding part or clause of the original Bill.

The joint minute of dissent of Dr. Bakshi Tek Chand and Pandit Balkrishna Sharma says, in passing at one place, that what the Select Committee considered was the revised draft and not the original Bill. This has to be interpreted in the light of what has been said above. The place where they make a mention of the revised draft being considered, the point of their contention is that the changes suggested by the revised draft were not merely changes of form, but related to matters of substance. It may be remembered that, in their detailed and able minute, they did not make any point that the original Bill was not considered by the Select Committee. Whether the changes suggested by the revised draft are good or otherwise, is the point they are making in their minute of dissent.

On the facts, therefore, as disclosed by records, I am clear that the Select Committee had given full and due consideration to the substantive provisions of the Bill that was referred to them? and the present motion of the Honourable the Law Minister is, therefore, competent, and in order.

Now, this being the decision on facts, what is the point of order of Mr. Kapoor ?

An Honourable Member : We may adjourn now; it is past five O'clock.

Mr. Speaker : The house may now adjourn.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Friday the 18th February 1949.

(11-45 A.M.) *** HINDU CODE**—*contd.*

Mr. Deputy Speaker : We will proceed to the consideration of the Hindu Code.

Sbri Jaspat Roy Kapoor (U. P. : General): May I raise a point of order ?

The Honourable Dr. B. R. Ambedkar: *rose—*

Mr. Deputy Speaker : A point of order has been raised by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I was going to refer just to that. Sir, the Order Paper contains sixteen different motions, some of them raise points of order and some of them are siubstantive motions. I was going to express myself on them before I actually spoke on my motion. However, if my friend has to say something, let him do so.

Mr. Deputy Speaker: Let us hear his point of order.

Shri Jaspat Roy Kapoor : Sir, on the previous occasion when the motion was being taken up I stood up to raise a point of order. I was then directed by the Honourable Speaker to wail until the point of order raised by my friend Mr. Naziruddin Ahmad had been disposed of. That point of order was disposed of that day exactly at 5 p. m. thereafter the House rose for the day. I hope you will be kind enough to allow me to raise that point of order now. But before I do so I want to assure the House that my object . . .

*C.A. (Leg.) D., Vol. II, Part II, 24th February 1949, pp. 821-52.

Mr. Deputy Speaker: The honourable Member will kindly state his point of order. There need be no apology or argument. I should like to hear the point of order.

Shri Jaspat Roy Kapoor : My point of order relates firstly to the rights and privileges of the members of this House and secondly to the competency of this House in the present Session to deal with such an important and controversial measure as the Hindu Code Bill when a large number of members of this House are not attending and cannot attend, not for personal reasons, or party reasons, but for reasons of state and in the interest of the country as a whole, being at present busy in the provincial legislatures with the budget sessions, although they are very anxious and eager to attend this House and participate in the discussion of this motion materially affects the whole Hindu society.

Honourable Members : This is no point of order at all.

Mr. Deputy Speaker : I am here to decide whether it is a point of order or not. You will kindly bear with me. I expect he will conclude his sentence soon.

Shri Jaspat Roy Kapoor : I know many of my friends here are very impatient to proceed with the Bill. It was therefore, Sir, that I at the outset wanted to assure the House that my object is not to sabotage the Bill with many provisions of which I am in agreement. My object is that things should be done constitutionally, the right thing should be done at the right time and in the right manner. As you are aware ....

Mr. Deputy Speaker: I have heard the point of order. The honourable Member feels that this House is not competent to proceed With this Bill. This is number one. Number two is that certain members, whom he would like to have in this House, are not here. Neither is a point of order against the motion for consideration being taken up. This is a sovereign Legislative Assembly fit to pass any legislation it likes. I have heard the point of order and do not want to hear any more arguments in favour of it. As regards the absence of some members, it is no doubt true that a number of members could not be here both from the Provinces and the States. But it is always open to them to come here and take part.

Babu Ramnarayan Singh (Bihar : General): May I say,....

Mr. Deputy Speaker: So far as the Chair is concerned and so far as this House is concerned, no such direction has been given and therefore the House is competent to proceed with its business. Honourable Members can come in at any time and take part in the debate. I rule out this point of order.

Babu Ramnarayan Singh : With all respect to you . . .

Honourable Members : Order, order.

Mr. Deputy Speaker **:** I would not hear anything more.

Babu Ramnarayan Singh : The previous ruling given by your.....

Mr. Deputy Speaker : I have considered all the previous rulings. I have got them here.

Shri V. S. Sarwate (Madhya Bharat): I wish also to raise one point of order.

Mr. Deputy Speaker : Is it any point of order?

Shri V. S. Sarwate : Yes.

Mr. Deputy Speaker : The Honourable Member will kindly briefly state the point of order.

Shri V. S. Sarwate : I shall be very brief. My point of order is this: That for the purposes of this Bill the provisions regarding publication have not been satisfied. It is due to the Chair to see that those provisions are observed. I refer to rule No. 20 which says : "As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the *Gazette.*" There is also a provision that a report of a Select Committee has to be published with the amended Bill. My submission in this case is this : that the Bill was published originally sometime in April 1947 before the Independence day. The political set-up of India has since changed and changed for the better. What I wanted to draw your attention to is this : That the Indian States which were not a part of the then British India were not to be affected by this Bill. Subsequently some States have merged and some have acceded to the Union in all subjects in August 1948. This is subsequent to the publication. There has been a Covenant of these States as the Chair may know sometime in August 1948. The result of that Covenant is that the States would now be automatically governed by any legislation which the Centre passes either in its powers of exclusive jurisdiction or concurrent jurisdiction. I therefore submit that it is the duty of the Chair to protect and guard the rights of the people of these States concerned who are affected by any Bill. I submit that the object of this is two-fold. Such provision enjoining publication enables the constituencies or the people affected by any Bill to express their reactions, their opinions and their feelings about it. I believe this is a fundamental principle of democracy that no Bill shall be passed unless the people affected thereby are given

an opportunity to express their opinion thereon. Secondly, the object of this publication is that the members of this Assembly may have an opportunity to ascertain what their constituencies feel about it. I need not say that it is the duty of the members here not to represent their individual views. They have to represent the views of their constituencies when important matters are concerned. As far as details or minor matters are concerned they may have discretion to express their views. But when a measure affects the whole life, the whole structure of society, then in such cases, in such vital matters it is the duty of the members to ascertain the views of their constituencies and represent them here correctly. They should not state what they feel. They should state what their constituencies feel. For this purpose, it is necessary that the Bill should be published. I submit that the Bill was published in the Gazette, but it was not published at the time when the people of the acceding States and merged States were in a position to give that serious consideration to this Bill, which this Bill deserves. Therefore I submit it was not a proper publication, as far as those people are concerned and now, since the Chair is here to guard their interests, I appeal to the Chair to order that the Bill be published before it is taken up for consideration.

The Honourable Dr. B. R. Ambedkar : My reply to the point of order raised by my honourable friend is two-fold. In the first place, there is never any obligation cast upon this House for circulating any Bill for publication before the House can take the matter into consideration. It is only in special cases, when the House by a Resolution or the Government by any executive action desire that the Bill is so important that public opinion might be invited; that public opinion is invited. There is no such right, no obligation at all on the Legislature or on the Government and therefore, from that point of view the point of order is no point of order at all.

My second submission with regard to the point of order is this, that we have deliberately confined the operation of this Bill to the provinces of India, and so far as the Provinces are concerned, the opinion has been canvassed three times, and I do not think any more purpose would be served by canvassing public opinion for the fourth time. When the occasion comes for the extension of the Bill to the Indian States, no doubt, this Legislature when a proper motion is placed before it, or the Government of the day, will take care that the wishes and the intentions of the States which have come into the Indian Union, will be consulted.

Mr. Deputy Speaker : I agree with the Honourable Law Minister that inasmuch as the scope of this Bill is confined in the first instance only to Provinces of India and it is highly problematical whether it will be extended to the acceding States and if so, on what terms and conditions of accession, it will be time for them to consider whether they can come in or not. As regards the other one, it is not obligatory to send the Bill for circulation unless by a motion accepted by the House. The Select Committee has considered this matter and has found tliis has not been so materially altered as to necessitate a republication in the Official Gazette. For these reasons I rule out the point of order.

12 NOON

The Honourable Dr. B. R. Ambedkar : Sir, before I proceed to speak on my motion, I think it would be desirable if I .....

Shri B. Das (Orissa: General): There is obstruction everywhere. Everybody rises to a point of order. Mr. Naziruddin Ahmad rose six months ago.

Mr. Naziruddin Ahmad (West Bengal: Muslim): It is a different point of order. My honourable friends should have a little patience.

Mr. Deputy Speaker : I can only state that honourable members will kindly consider well before they raise a point of order. I also expect they will consider that if it should turn out to be a dialatory motion, they will invoke upon themselves the criticism of the House.

Mr. Naziruddin Ahmad : My point of order is not dialtory.

Mr. Deputy Speaker : It is open to any honourable member to raise a point of order. An honourable member can take as many points of order as are reasonable and proper.

Mr. Naziruddin Ahmad : The objection to the point of order is dilatory. My point of order is this : the honourable Minister for Law has already spoken on this motion. He completed the first part of the motion and then the subsequent stages began. He has a right to reply at the end of the debate. Now the motion has been made that the Bill be taken into consideration and a speech has been delivered on the 31st of August, 1948. We have on the agenda a list of amendments. We have to proceed straight to the agenda and then when a motion is made the Honourable Minister ceriainly has a right of reply, and in the end a general right of reply. At this stage, the Honourable Minister can not make a second speech on the motion.

Mr. Deputy Speaker : I find from the proceedings on the 31st of August, 1948 the following :—

"*The Honourable Dr. B. R. Ambedkar* (Minister for Law): Sir, I move: "That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration."

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order.

Mr. Speaker : I shall hear the Honourable Minister first and then take the point of order.

The Honourable Dr. B. R. Ambedkar: Sir, in view of the urgency of other Government business which is on the agenda and to which Government feels it must give precedence, I do not propose to make a speech in support of my motion, because it is quite obvious that if I were to make a speech in support of my motion, that is bound to give rise to a debate which will result in the consumption of a great deal of the time of the Government. We have already few days let before the House is due to rise, and I, therefore, request you to allow this motion to stand over for further consideration in the next session of the Assembly."

In view of this, the Honourable Dr. Ambedkar is entitled to proceed. I am exceedingly sorry that this point of order has been raised. It is only a dilatory motion.

The Honourable Dr. B. R. Ambedkar : As I was going to say, it would facilitate my work a great deal if I were to know from you what procedure you propose to adopt with regard to the 16 motions that have been tabled as against the motion which I have made, and about which I propose to speak during the subsequent period. These 16 motions fall into three different categories. There are certain motions which propose that the Bill be further circulated for eliciting public opinion. There are certain motions which propose that the Bill be referred to a Select Committee, which is different from the Select Committee which already reported on the Bill. And there are motions which propose that the Bill may be re-committed to the same Select Committee which has already reported.

There was one other or rather two other motions, one standing in the name of my honourable friend, Shri Prabhu Dayal Himatsingka and the other standing in the name of my honourable friend, Shri Biswanath Das, which propose that the Bill should be circulated to people residing in the acceding States, before the Bill could be taken into consideration. With regard to these two motions, a point of order was raised recently by my honourable friend, Shri V. S. Sarwate, which you have been good enough to dispose of and I therefore take it that motions Nos. 7 and 8 must be taken to have been deleted from the agenda of today. The other motions remain and I want to know

whether it is your desire that these motions may be put simultaneously along with my motion, so that all of them may be debated together and ultimately each motion may be put to the House separately, or whether you propose to have these motions taken up before my motion, so that they may be disposed of and the ground may be cleared for my speech on the motion, which I have tabled.

I might say one or two points with regard to the motions that have been made. There are certain motions which you are bound to put, I agree, unless the movers of these motions by themselves voluntarily desire not to move these motions. There are certain motions which are within your discretion, and unless you are satisfied that these motions are not dilatory motions but have behind them certain points of substance, it would not be open in accordance with the rulings which have been given by previous speakers, who have dealt with these questions, to put these motions to the House, Because the Chair must be satisfied that they are motions behind which stand substantial grounds and they are not purely dialtory. For instance, the motion that, the Bill should not be taken into consideration now, but should be taken into consideration at some later stage is one of those motions, I submit, which according to the rulings of the Chair heretofore could fall within your discretion, where you are satisfied that the reasons advanced by my honourable friends are substantial reasons, and therefore, you should put the motion to the House. For instance, the motion for recommittal is one such motion, because if you will kindly refer to these two volumes of Rulings,—I am sure you have.....

Mr. Deputy Speaker : What I propose to do is this.

The Honourable Dr. B. R. Ambedkar : I should like to have your guidance in this matter.

Mr. Deputy Sopeaker : I have considered this matter and the number of motions that have been tabled. So far as motions 1 and 2 are concerned, motion 1 is that the Bill as amended by the Select Committee be withdrawn.

Pandit Thakur Das Bhargava (East Punjab : General): I do not propopse to move it at this stage: not that I am not entitled to move it.

Mr. Deputy Speaker : Then it is not necessary to go into the question whether it is in order out of order. The second motion is .....

Pandit Thakur Das Bhargava : I am not moving it at this stage.

Mr. Deputy Speaker : Then there is the amendment by Master Nand Lal that the consideration of the Bill be postponed to the Budget Session of 1951.

Master Nand Lal (East Punjab : General): I am not moving it.

Mr. Deputy Speaker : These three withdrawals clear the ground. By whatever name they may be called, these three motions, substantially are for adjournment of the debate. I thought that, before the Honourable Law Minister, the mover of the Bill proceeds the movers of these motions must have risen in their seats and pressed for the taking up of these motions, because, before their motions are disposed of, the honourable mover could not be allowed to speak. Inasmuch as they were not moved, I kept quiet. Now it is clear they are withdrawn. The other motions *viz*, those for re-circulation or for reference to Select Committee, whatever their nature might be, they are motions which under the Rules any person is competent to make. It is a question for the House to deal with them. So far as the Select Committee motions are concerned, I must be satisfied in the first instance, about their need. Apart from that, there is a motion for recirculation with respect to which some such requirements have not been laid down, so far as I can see in any rule or rulings. Therefore, I propose at this stage to allow the mover of the Bill to make his speech and after he concludes his speech, allow the motions for Select Committee and Circulation to be moved without any speech. Then, the discussion will go on on all the motions and I will put them one after another to the House.

***The Honourable Dr. B. R. Ambedkar :** I am obliged for your guidance, Sir. As usual when presenting a motion for the consideration of a Bill as reported by the Select Committee it is the duty of the Chairman of the Select Committee, in the first instance, to draw the attention of the house to such changes as may have been made by the Select Committee in the original Bill which has been referred to the Select Committee. I propose to follow that procedure in the first instance.

Sir, the first part of the Bill deals with marriage and divorce. So far as this part of the Bill is concerned, the Select Committee has added two clauses which relate to the restitution of conjugal rights and to judicial separation. These provisions specifically absent from the original Bill. The draftsmen of the original Bill felt themselves content by reference to the Indian Divorce Act of 1869 which contains provisions relating to the restitution of conjugal rights and judicial

*C.A. (Leg.) D., Vol. II, Part II, 24th February 1949, pp. 826-43.

separation. The original draftsmen of the Bill felt that a reference in this Bill to the Indian Divorce Act would be quite sufficient to invoke these two provisions which were contained in the Indian Divorce Act and consequently it was not necessary expressly to mention these two matters in the Code. The select Committee felt otherwise. The select Committee felt that as this was going to be a complete Code of Hindu Law, it was wrong to leave the code incomplete, and so to say, legislate by reference. They therefore thought that, instead of leaving this matter to be invoked by reference to the Indian Divorce Act, it would be desirable to embody in the Code itself the provisions contained in the Indian Divorce Act relating to these matters and consequently the part dealing with marriage and divorce has been expanded by the Select Committee by the addition of the clauses relating to these two matters. The House will see that there is no change as a matter of fact between the original Bill and the Bill as drafted by the Select Committee. AH that is done is that what was done by reference to the Indian Divorce Act has been done expressly and positively by the inclusion in the Code of specific sections relating to these matters.

With regard to adoption, the Select Committee has introduced a few new changes. The first change that they have made is that when a father is disqualified by reason of the fact that he had changed his religion and ceased to be a Hindu, the mother has been given the right to give a boy in adoption. In other words, change of religion by the father from Hinduism to some other religion has been introduced as disqualification in the matter of the right to give in adoption. Consequenly, a mother in those circumstances has been empowered to give a boy in adoption. Similarly, if a widow was there and there was a boy, that boy certainly could be given in adoption by the mother when the father was not living. There again, a disability has been introduced to the effect that if the widow ceased to be a Hindu, she would lose her right of giving the boy in adoption, which she would otherwise have.

Another change which has been made by the Select Committee is with regard to the different modes of taking a boy in adoption. Hitherto, as the House knows, there are various forms of adoption. The main form of adoption which is recognised by the Smritis is what is known as the Dattaka form of adoption. In addition to the Dattaka form of adoption, there have prevailed in the various parts of India, customary forms of adoption such as Godha Adoption, Kritrima Adoption, Dwyamushyayana Adoption. The Select Committee felt that

as they were codifying the law, it is desirable not to allow any room for customs to grow, because the effect of customs being permitted would be to eat into the Code and make the Code after certain time *null and void.* Therefore, the Select Committee decided that if anybody wants to adopt under this Code, nobody can make any adoption except in accordance with the provisions of this Code, and Dattaka shall be the only form and no other.

Then, Sir, we come to the question of the right of the adopted boy to divest the persons in whom property has been invested before the adoption takes place. As every member of this House, who is aware of the provisions of the Hindu Law, will know, under the existing Hindu law, it is permissible to a boy who has been adopted, no matter at what stage he has been adopted—he may have been adopted forty years after the death of the father—time makes no change at all in his rights—to file a suit to set aside any alienation or transfer of property made by the widow who has adopted him. Any amount of litigation goes on on this particular point. In fact, if anyone were to examine the total amount of litigation among the Hindus on the various points of Hindu law, I am sure they will find that litigation on the question of divesting the property by the adopted boy would be the largest volume. It is therefore desirable that this matter should be settled once and for all. The Rau committee adopted the procedure of dividing adoption into two categories—adoption made three years before the death of the father and the coming into operation of the Code: and adoption made after the Code. They laid down that a boy, if he was adopted three years before the death of the adoptive father would be entitled to the original rights which an adopted son had under the Hindu Code. But if he were adopted three years after he would not be entitled to set aside alienation.

The second thing that happened as a result of adoption under the Hindu Law was that he completely divested the widowed mother who made the adoption, with the result that the entire corpus of the property passed into the hands of the adopted boy, who, in a certain sense was a stranger, and notwithstanding the notional change that he entered into the family of the adopted father, he practically continued his affiliations with the members of the natural family. The result was that after the adoption had taken place, instead of the adopting mother getting any kind of security for hereself as a result of adoption which a natural mother would get from a natural son, she found that this new adopted boy ran away with the property and left the mother with

noting but the right of maintenance. We thought that that was not a desirable state of affairs from the point of view of giving security to women, and consequently certain changes were made. The original distinction that was adopted in the Rau Committee was deleted and a provision was made that the rights of the adopted son shall accrue to him not form the date of the death of his adopting father but shall accrue to him form the date of his adoption, so that any alienation that may have been made prior to his adoption were beyond his reach, were unchallengeable by him.

The second provision that we have made was that the adopted son shall not as a result of adoption deprive the adopting mother completely of her right of property. What the Bill says in its altered form is that only one half of the property of the widow will go to the adopted son. The other half, notwithstanding the fact that the widow has adopted will continue to be in the possession and enjoyment of the adopting mother. The result is that the Committee has permitted adoption which the Hindu community feels is a necessary thing for the purpose of perpetuating the family. But at the same time we have taken care to see that the adoption does not beggar the mother altogether.

Mr. Deputy Speaker : Is not that the result under the Deshmukh Act?

The Honourable Dr. B. R. Ambedkar: No. As **I** say, she gets only the maintenance.

Mr. Deputy Speaker: She gets half the share of the property.

The Honourable Dr. B. R. Ambedkar : As soon as the adoption takes place all that passes to the son.

Shri Prabhu Dayal Himatsingka (West Bengal : General): According to the 1937 Act she is a co-heir with the son.

Shri L. Krishnaswami Bharathi (Madras : General): The son comes later on.

The Honourable Dr. B. R. Ambedkar : That may be so. Now I am coming to minority and guardianship. Here there are only two changes made by the Select Committee in this part of the Bill. The first change is that the power of the Hindu father as a natural guardian of his minor son has been taken away if he renounces the world or ceases to be a Hindu. The original law was that the father was the natural guardian and no matter what change took place in his condition either by his religion or in any other way, he still continued to be the guardian of his minor son. The Committee felt that as this was

a Code intended to consolidate the Hindu society and their laws, it was desirable to impose this condition, namely, that the father shall continue to be the natural guardian so long as he continues to be a Hindu. The Code in its altered form also has introduced another change, namely, that a Hindu widow has been given power to appoint a testmentary guardian if her husband has not appointed anyone. She had not any such power and this power has been given to her by the Select Committe.

Now, Sir, I come to the part of the Bill which deals with succession and I will first refer to changes made in the succession to males. Now so far as what are called the compact series of heirs under the Hindu Law, which are placed in category I by the Rau Committee is concerned, the Select Committee has made no alteration at all. The compact series remains as it is, both in the line of heirs as well as in the order of heirs. That matter has not been altered at all. But with regard to persons which are included in clauses 1 to 4 of the Rau Committee, certain changes have been made both in the matter of the line of succession and also in the matter of priority of succession. The Committee has followed both the principles, namely, propinquity as well as natural love and affection, and it is on that basis that the Select Committee has made certain alterations in the heirs set out in clauses 1 to 4 of the original Bill. The select Committee has also done one thing more : it has curtailed the number of degrees of agnates and cognates who can become heirs to the deceased, and also it has removed the other heirs, such as for instance, heirs which are not related, such as Sam Brahmchari Guru and so on. The reason why the Select Committee has curtailed the number of heirs as provided for in the original Bill is this. We are under this code giving the right to make a will to every Hindu. A line of criticism has been levelled in a very important journal, namely, the journal of Comparative Legislation, in which a very eminent lawyer has made the point that when you give the right to make a will, it is unnecessary to provide such a long list of heirs which extend to the fourteenth degree from the deceased. If the deceased is interested in a man which is related to him in the fourteenth degree and is alive at the time of his death, it is open to him to make a will and to give a part of his property to the particular person in whom he is interested.

If the deceased himself during his lifetime has not chosen to remember a relation who is related to him by the 14th degree there is no particular reason why because of mere intestacy he should be

permitted to come in for a share. That is one of the reasons why the Select Committee adopted this provision.

I might also draw the attention of the House to the fact that with regard to widows a disqualification has been introduced by the Select Committee which says that a widow on remarriage shall lose her right of inheritance.

Then with regard to the daughter's share, which of course existed in the original Bill itself, the Select Committee has made a somewhat important alteration. The original Bill said that the daughter shall get a share equal to half the share of the son and in order to make equity equitable in devising the line of succession to the Stridhan property of the woman they had also provided that in that case the son will take one half of what the daughter takes, so that the daughter will take one half in the father's and the son will take one half in the mother's property. I cannot say that that was an inequitable proposition but somehow the Select Committee and I believe I can say against the best part of their judgement increased in their enthusiasm the share of the daughter in father's property from one half to one full share, equal to that of the son. (*An honourable Member:* "The son is also given.") I am aware of that. With regard to succession to females there are only two changes which the Select Committee has made. Under the existing rule the husband of a woman in the case of succession to females comes much later under the Hindu law and that provision was included by the old Rau Committee. The Select Committee felt that that was rather unjust, because it may be (it is often possible) that much of the property which is called Stridhan property or property which comes into the hands of a woman may, and perhaps does, to a very large extent come from the husband and if the husband is the principal source of the property, that comes into the hands of the woman, it is not proper that it should be postponed to other heirs. Consequently the Select Committee altered the provision and brought the husband in line with the other Stridhan heirs, so that the husband now shares simultaneously with the heirs of a woman, who share in the Stridhan property. As I said that because that increased the share of the daughter in the father's, they also *pari passu* made the share of the son in the mother's Stridhan property equal to that of the daughter.

Mr. Deputy Speaker : They balanced the son and daughter.

The Honourable Dr. B. R. Ambedkar : No change has been made in the law relating to maintenance which is worthy of requiring any mention to this House.

Then I come to the question of the joint family. It has been said that the provisions contained in the Bill as it has emerged from the Select Committee contained provisions relating to joint family which are absolutely new. I would like to take this occasion to repudiate that suggestion. No change has been done by the Select Committee. The provisions of the Mitakshara joint family were originally contained in the Bill as drafted by the Rau Committee and it was placed before this House on the 9th August, which the House accepted and sent to the Select Committee. (*Honourable Members:* 9th April) Therefore my first submission is that no new change has been made by this Select Committee. All that the Select Committee has done is to add two new clauses—clause No. 88 and clause No. 89. Clause 88 deals with the doctrine of what is called pious obligations. Clause 89 deals with the liability of the joint family to pay joint family debts. It was unnecessary to include these clauses, because once you break up coparcenary property it is not necessary to make any express provision with regard to the doctrine of pious obligation, because the doctrine of pious obligation is necessary where there is survivorship property : because by survivorship where A takes the property of B and the property of B is encumbered with debts, no special doctrine is necessary to impose an obligation upon B; because in hereditament which a person gets, he takes both the profit and the burden of it. But in view of the theory of the Mitakshara that every coparcener gets the property by survivorship, which does not belong to the deceased, the Patna high Court, if I may say so, as well as the Bombay High Court Bar pressed upon us very strongly that it was very desirable that these two things which were implicit, so to say, in the Mitakshara doctrine of joint family, shall be stated expressly in the Code, so that when the question of judicial interpretation arises there may be no occasion for any kind of dispute, doubt or controversy. As one of the objects of the code was to make the law clear not merely to the lawyers but to the ordinary citizens and as it is a suggestion which came from such a weighty authority as the Patna High Court and the Bombay High Court Bar, we thought it desirable to introduce these two things, namely no obligation to pay debts on the original ground of pious obligation and the liability to pay primary debts which belong to the family. Besides that there has been no change at all. If my friends have some doubt still on the subject that we have made fundamental changes in regard to the joint family of the mitakshara,

I would like to draw their attention to section 86 (Part v : Joint Family Property). Section 86 of the new Bill as it has emerged from the Select Committee is the same word for word, except for ordinary verbal changes, as part III-A section 2, on page 12 of the original Bill as drafted by the Rau Committee. Similarly section 87 which also deals with joint property is word for word the same as part III-A, section 2, page 12. Anybody who compares the two I am sure will accept the proposition which I have enunciated in this House that this is not an innovation by the Select Committee at all but they form part and parcel of the original Bill as drafted by the Rau Committee.

I should like to dispel any further doubt that may exist on this point by referring to the Rau Committee's Report (page 13). This is what the Rau Committee says (paragraph 51):

> "Turning now to the contents of the Draft Code the main proposals on which differences of opinion have manifested themselves in varying degree are the following :
>
> (1) the abolition of the right by birth and the principle of survivorship and the substitution of the *Dayabhaga* for *Mitakshra* in the *Mitakshra* Provinces;
>
> (2) giving of half a share to the daughter;
>
> (3) the conversion of the Hindu woman's limited estate into an absolute estate;
>
> (4) the introduction of monogamy as a rule of law;
>
> (5) the introduction of certain provisions for divorce."

I think Hon. Members will see that the Rau Committee in setting about its work made it perfectly known to everybody in this country that the Code that they had framed and which subsequently was embodied by them did contain the specific provision. I have no doubt about it that anybody who has read the volumes of evidence which have been collected by them previsouly by the joint Select Committee appointed by this House, by the Rau Comittee and by this Government by an executive order—would find that there is no person either in this House or outside, who has paid any attention to this part of the Code, who will be under any wrong impression that the Rau Committee had decided or propsoed that this co-parcenary should not be abolished. It is therefore not a new innovation of the Select Committee at all.

The Select Committee has made some changes with regard to the application of the Hindu Code. The Rau Committee's Bill contained a provision that the Bill should not extend to areas to which the Marumakkattayam and Aliyasanthanam laws apply. Somehow the Select Committee in its enthusiasm transgressed, if I may say so without any disrespect, the bounds of reasonablnness and came to the

conclusion that there ought to be no area which ought to be exempt from the operation of this Code. Consequently they deleted the provision.

Mr. Deputy Speaker : In the interests of uniformity.

The Honourable Dr. B. R. Ambedkar : I do not know whether it was done rightly or wrongly; that is a matter which the house will consider at a later stage.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): May I ask whether the honourable speaker was dissenting from that view ?

The Honourable Dr. B. R. Ambedkar : I will dissent at a later stage perhaps. I have no empty mind but I have still an open mind.

Shri H. V. Kamath (C. P. and Berar: General): Not a vacant mind !

Pandit Thakur Das Bhargava : On every question I hope.

The Honourable Dr. B. R. Ambedkar : Sir, in the ordinary course a speech of the sort which I have made is generally regarded not only appropriate but sufficient for the occasion. But it would be futile on my part to disguise the fact that there is a section—if not a large section, a section in the house—which feels a certain amount of compunction over certains parts of the Bill. Neither can I disguise from myself the fact that outside the House there are many people who are not only interested in the Bill but, if I may say so, very deeply concerned about it. I therefore think that it is only right, if you will permit me, to add a few general observations with regard to the points of controversy which I have noticed in several newspapers which I have been persuing ever since the Bill has been on the anvil. I will take this matter also part by part and section by section. I will deal only with what I regard have been considered as points of controversy. Let me take marriage and divorce. Here I find that there are three points of controversy.—The first point of controversy is abolition of castes as a necessary requirement for a valid marriage; the second point of controversy is the prescription of monogamy; and the third point of controversy is permission for divorce.

I will take the first point of controversy, namely—abolition of caste restrictions. So far as this Bill is concerned, what it does is to arrive at a sort of compromise betweeen the new and the old. The Bill says that if member of a Hindu community wants to follow the orthodox system which requires that a marriage shall not be valid unless the

bride and bridegroom belong to the same *varna,* the same caste or the same sub-caste, there is nothing in this Code which can prevent him from giving effect to his wishes or giving effect to what he regards as his *dharma.* In the same way if one Hindu who is a reformist and who does not believe in *varna,* caste or sub-caste, chooses to marry a girl outside his *varna,* outside his caste, outside his sub-caste , the law regards his marriage also as valid. So far as the marriage law is concerned there is therefore no kind of imposition at all. The *vydhikas,* the orthodox, are left free to do what they think is right according to their *dharma.* The reformers who do not follow *dharma* but who follow reason, who follow conscience, have also been left to follow their reason and their conscience.

Shri Mahavir Tyagi (U. P. : General): Are they permitted to marry outside their religion also if their conscience directs them in that manner?

The Honourable Dr. B. R. Ambedkar : Well, we will have another Bill for that. I do not know whether my honourable friend Mr. Tyagi is unmarried. If he is I will hurry it up.

Shri Mahavir Tyagi : I want to make way for others.

The **Honourable Dr. B. R. Ambedkar :** Consequently, what will happen in Hindu society so far as marriage law is concerned if there will be a competition between the old and the new. And we hope that those who are following the new path will win subsequently. But, as I say, if they do not, we are quite content to allow two parallel systems of marriage to be operative in this country and anyone may make his choice. There is no violation of a *shastra,* no violation of a *smriti* at all.

With regard to monogamy it may be that it is a new innovation. But I must point out that I do think that any Member in this house will be able to point out having regard to customary law or having regard to our *shastras* that a Hindu husband had at all times an unfettered, unqualified right to polygamy. That was never the case. Even today, in certain parts of South India there are people who follow this, a section of the Nattukottai Chettiyars—the case has been reported in the Reports of the Privy Council itself, I am not depending on mere heresay evidence—but among the Nattukottai Chettiyars there is a custom that a husband cannot marry a second wife unless he obtains the consent of his wife. Secondly, when a consent is obtained, he must allot to her certain property which I think in the Tamil language

is called *moppu*. That property becomes her absolute property so that if after her consent the husband marries and ill-treats her, she has a certain amount of economic competence in her own hands to lead an independent life. I cite that as an illustration to show that there has not been an unqualified right for polygamy.

A second illustration wliich I would like to give would be from the Arthashastra of Kautilya. I do not know how many Members of the House have perused that book, I suppose many of them have. If they have, they will realise that the right to marry a second wife has been considerably limited by Kautilya. In the first place, no man can marry for the first ten or twelve years because he must be satisfied that the woman is not capable of producing children. That was one limitation. The second limitation imposed by Kautilya on the right of second marriage was that the husband was to return to the woman all the *stridhan* that she had acquired at the time of marriage. It is only under these two conditions that Kautilya's Arthashastra permitted a Hindu husband to marry a second time.

Thirdly, in our own country, in the ligislation that has been passed in various Provinces, monogamy has been prescribed. For instance in the *marumakkathayam* and the *aliyasanthanam* law both of them prescribe monogamy as a rule of marital life. Similarly, with regard to the recent legislation that has been passed in Bombay or in Madras, similarly in Baroda, the law is the law of monogamy.

I hope the House will see from the instances I have given that we are not making any very radical or revolutionary change. We have precedent for what we are doing, both in the laws that have been passed by various States in India, also in the ancient *shastras* such as Kautilya's Arthashastra. If I may go further, we have got the precedent of the whole world which recognises monogamy as the most salutary principle so far as marital relations are concerned.

Shri Deshbandhu Gupta (Delhi) : What about the Mohammadan Law?

The Honourable Dr. B. R. Ambedkar : We shall come to Mohammadan law when we discuss the Mohammadan law.

Coming to the question of divorce, there again I should like to submit to the House that this is in no way an innovation. Everybody in this House knows that communities wliich are called *shudra* have customary divorce and what is the total of what we call *shudra* ? Nobody has ever probably made any calculation as to the total number of *shudras* who go to compose the Hindu society, but I have not the

slightest doubt in my mind that the *shudras* form practically 90 per cent of the total population of the Hindus. What are called the Regenerated classes probably do not fill more than ten per cent of the total population of this country, and the question that I want to ask of honourable Members is this : are you going to have the law of the 90 per cent of the people as the general law of this country, or are you going to have the law of the 10 per cent of the people being imposed upon the 90 per cent ? That is a simple question which every Member must answer and can answer.

So far as the 'regenerated' classes are concerned there was a time, if one refers for instance to the time when the Narada *smriti* or the Parashara *smriti* were written, when the *smritis* recognised that a woman can divorce her husband when he has abandoned her, when he died, when he has taken *parivrija,* and she was entitled to have a second husband. Consequently, it may be that at a later stage I shall read to you some extracts from your *shastras* to show. (*An honourable member:* "Your *shastras"*). Yes, because I belong to the other caste.

I shall read the extracts to show that what has happened in this country is that somehow, unfortunately, unnoticed, unconsciously, custom has been Allowed to trample upon the text of the *shastras* which were all in favour of the right sort of marital relations. My submission, therefore, to the house is that so far as any new principles have been introduced in the law of marriage or divorce, whatever has been done is both just and reasonable and supported by precedent not only of our *shastras* but the experience of the world as a whole.

With regard to adoption, there are again three points of controversy. One point of controversy with regard to adoption is this, that like the old Hindu law we do not make similarity or identity of caste a requisite for a valid adoption. We follow the same rule that we have followed with regard to marriage. Here again, I may say that if a *Brahmin* wants to adopt a *Brahmin* boy, he is free to do so. If a *Kayasth* wants to adopt a *Kayasth* boy, he is free to do so. If a *Shudra* wants to adopt a boy of his own community he is free to do so. If a Brahmin is so enlightened as not to adopt a boy belonging to his own community but adopts a *Shudra,* he is also permitted to do so. There is therefore no kind of imposition.

Seth Govind Das (C. P. and Berar: General): Why do you consider such a Brahmin enlightened ?

The Honourable Dr. B. R. Ambedkar : Well, I do not know. From my point of view certainly he is enlightened; from your point of view he may be a very dark man, but that is a difference of opinion.

With regard to the question of the limitation on the right of an adopted son to challenge all alienations made by the widow before adoption, I do not think that there can be any controversy at all. There is no reason why we should continue the notion that a boy when adopted becomes the son of the adopted father right from the time when the adopted father died. This is a pure fiction. It has no value at all. It is not merely a fiction; it is a fiction which gives rise to tremendous litigation and tremendous difficulties. It is therefore right that the adoption should be simultaneous with the vesting of the property. I do not think any member of the House will think that this is a proposition which we ought not to accept at this stage. (*Shri B. Das :* "We all accept".)

Similarly, as I have stated, the limitation upon the right of a boy who is adopted to divest the mother completely and to make her nothing more than a dependant waiting for such maintenance as the adopted boy may give, I do not think that there is any member of the House who will think that such a situation can be justified on any ground whatsoever. I think it is right that we preserve the right of adoption which the orthodox community cherishes so much, but, Sir, I do not understand why there should be adoption. Most of us who make adoptions have no name to be recorded in history. Personally, I myself certainly would not like my name to go down in history, because my record is probably very poor. I am an unusual member of the Hindu community. But there are many who have no records to go down and I do not understand why they should indulge in adopting a son—a stupid boy, uneducated, without any character—not knowing his possibilities and fastening him and fathering him upon a poor woman, whom he can deprive of every property that she possessed. Therefore, my submission is this, that if you do want to cherish your old notions with regard to adoption at any rate make this provision that the adopted boy does not altogether deprive the mother of the property which is her mainstay. I do not think that that limitation can be at all a point of controversy.

With regard to the question of the abolition of customary adoption, I would like to say two things. There is a general argument which the House will be able to appreciate. It is this. A Code is inconsistent with customary law. That is a fundamental proposition. If you allow a Code to remain and at the same time permit custom to grow and custom to plead against the Code, there is no purpose in having a

Code at all, because a custom can always eat into the Code and make the Code *null and void*. With regard to this particular matter of customary adoption such as *Krithrim* adoption, *Godha* adoption and *Dwaimushayan* adoption, my submission is this, that these are really not adoption at all. As the Privy Council in one of its rulings has definitely stated, adoption is purely a religious affair. The getting of property by the adopted son is a secondary matter. He may get property, he may not get property, and even though he may not get property his adoption from a religious point of view may be valid. Therefore, my submission is this, that all these customary adoptions are nothing else but devices to keep property within the two families which enter into this bargain, and in my judgement, since we have passed the Constitution and included in the Directive Principles one article saying that the State should take steps not to allow property being concentrated in the hands of one or a few, such devices like the *Dwaimushayan* where two parties merely agree to share the property and keep it with them ought not to be tolerated. Besides, there is no reason why parties who want to make a genuine adoption should not conform to the rules and regulations regarding the *Dattaka* adoption which is permitted by the law.

Mr. Deputy Speaker: It is now one o'clock. The honourable Minister may continue after Lunch.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

The Honourable Dr. B. R. Ambedkar : I want not to take up the points of controversy relating to the topic of co-parcenary law. The question is raised: Why does the Bill wish to seek to abolish the co-parcenary which is prescribed by what is called the Mitakshara law? Now, Sir, having applied my mind in the best way I can for the proper exposition of this subjects, I think this is a question which required to be considered from three different points of view. One is how large a volume of property is included within the ambit of what is called co-parcenary property. If the volume that is comprised

within what is called co-parcenary property is a very large part of the property which a man in these days holds, then no doubt some serious attention will have to be paid to this question. Therefore, that is the first aspect of the question that one has to examine.

The second aspect that we have to consider with regard to the retention of what is called co-parcenary property is whether any coparcener had individually the right to alienate property. Thirdly, whether any cop-parcener has a right in himself to break up the coparcenary. Obviously, if the property included within the class of property called co-parcenary property is a small part of the property, different questions will arise. Similarly, if any co-parcener, under the present existing Hindu law, has already got the right to alienate his share in the property, then obviously, the question whether this law or this Bill is abrogating co-parcenary property would stand on a different footing. Similarly, if under the existing Hindu law a coparcener has an inherent right to break up a co-parcenary, then my submission is that the question that this Bill breaks up the co-parcenary becomes very much less momentous than is thought of by most members of the House as well as people outside.

Let me therefore take the first question : What is the extent of the non-co-parcenary property which a co-parcener may hold, notwithstanding the fact that he is a member of the co-parcenary ? Now, my friends, who have paid attention to this subject and know what the position is under the Hindu law, will know that there is no disqualification upon a co-parcener to hold separate property while he continues to be a co-parcener. A co-parcener may have capacity to hold two different sorts of property—property which belongs to the co-parcenary and property which does not belong to the coparcenary, but belongs to himself and does not go, by what is called survivorship.

Let me give the House some idea of the extent and nature of the property which a co-parcener can hold, although he is a co-parcener. I have taken from the existing text books on the Hindu law, the following categories of property which a co-parcener can hold, notwithstanding the fact that he is a co-parcener. Firstly, property inherited by a hindu from a person other than his father, grand-father and great grand-father. If a Hindu gets property from a person who is not his father, grand-father or great grand-father, that property is

in his hand and is separate property and does not belong to the coparcenary. Secondly, property inherited by him from his maternal grand father, thirdly gift of ancestral moveables made to him by his father and fourthly property granted by government to an individual who is a member of the co-parcenary becomes his personal property and not the property of the co-parcenary. Then fifthly we have ancestral property lost to the family and recovered without the aid of the family property. That also, although originally co-parcenary property, becomes his private property. Then sixthly, there is the income from separate property and purchases made from the income of such property. They are also private property. 7, share of a co-parcener by partition if he has not male issue. 8, property held by a sole surviving co-parcener when there is no widow with the power to adopt. 9, separate earning of a member of a joint family co-parcenary and 10, gains of learning. Such vast amount of property included in these 10 categories is today under the Mithakshara law the private property of a co-parcener. It does not become the property of the co-parcenary.

Let me illustrate this by one plain illustration. There are hundreds and hundreds of clerks in our Secretariat, some drawing small salaries, some drawing huge salaries more than the salaries of the Members of the Cabinet—Rs. 4,000 (Honourable Members : “Clerks ? Are they clerks ?”) I mean officers. In a certain sense they are glorified clerks.

The point I want to put to the house is this : that such large income as gains of learning, which come up in individual cases to Rs. 4,000, if there was a joint family in the true sense of the word, ought to go to the joint family for the joint maintenance of that family. What happens ? Under the Gains of Learning Act passed only a few years ago, this very Assembly, not I mean the Members, passed a law that such gains of learning, which form, as I say, the principal part of the income of a joint family and which a member is enabled to earn by reason of the education that was given to him out of the family income, have now been made his personal and private income. My submission to the House is this : when so large a property, as I have mentioned, included in these ten different categories have already been made in modification of the original laws of Mitakshara private property, what is the balance of property that is left which can be said to comprise the co-parcenary property ? My submission is that really very, very small volume of property is left to comprise within

what is called the co-parcenary. Let me take the other question. It is said that the co-parcenary—I hope Members understand that coparcenary is something very narrow and very limited and it is not the same thing as a joint family, which is quite a different matter—system enables the Hindus to preserve the property, to retain it, that there can be no break-up, there can be no squandering of money so to say on the part of any member of the family. A question that I want to put to the House is this : Is it true under the existing law of the Mitakshara that this property cannot be alienated, cannot be squandered ? The answer is completely in the negative. Let me give you one or two illustrations. I am taking the case of the father. The father can alienate joint property for antecedent debt. All that the father has to do is to first of all create a debt, say one thousand or two thousand rupees on a personal promissory note. Subsequently, after six months he becomes entitled to sell the whole of the co-parcenary property, if that becomes necessary for the purpose of meeting that antecedent debt. Now, a submission that I want to make to the House is this : Does the lodgment of such enormous power in the hands of a father to sell the property for purely antecedent and personal debts ? I want the house to bear in mind that the Mitakshara law makes a distinction between the father and the manager so far as the alienation of property is concerned. True a manager cannot alienate a property belonging to the co-parcenary unless and until it is proved that there is a family necessity for which alienation is necessary. But with regard to the father, there is no such obligation at all. A father can create a debt personally for himself and he becomes entitled to alienate that property for a purely personal debt which has not been incurred for the pruposes of the family. The only limitation that is imposed upon the right of the alienation of the father under the Mitakshara law is that the debt must not be impious, must not be for an immoral purpose and if it is not immoral, then the father can alienate the whole of the property of the co-parcenary. There is no limit at all.

Similarly, take the case of the son. It is also under the Mitakshara law within the competence of a son to demand the partition of the family property at any time he likes. I could have well understood the argument for the conservation of the co-parcenary property if the rule of Hindu Law was that no co-parcener was entitled to alienate the property, that the property must remain the property of the coparcenary, but that is not the case. The root of dissolution, the root

of destruction of the co-parcenary property is in the co-parcenary itself, because it is the co-parcenary law that gives a vested right, a right from the very birth to demand partition of the property and disrupt the whole of the society.

Thirdly, even if a son does not alienate his property, he can create a debt on the property for his own personal pruposes and the creditor who has advanced that money under Mitakshara law has a perfect right to sue for the partition of the co-parcenary in order to recover his debt. A stranger, therefore, under the Mitakshara law has a right to break up the co-parcener. I would like to ask my honourable friends, who are worried about this matter, where a large part of the estate, of the assets lies outside the co-parcenary property and so far as the co-parcenary property is concerned, the father has a right to alienate without any kind of limitation except the immorality of the debt, the son has a right to break up the property at any time he likes and the son has a right to create a charge on the property enabling the creditor to sue for partition, is it something which might be called a solid system, which is fool-proof and knave-proof ? My submission is this, that the co-parcenary property law as it stands, contains within itself the elements of disruption. Therefore, the Bill is doing nothing very radical in saying that the share shall be held separately. As we all know to-day the condition is such that everybody wants to live separately. The moment a father dies, the sons claim that there shall be a legal recognition to facts, as they exist to-day. There is nothing that is radical at all in this part of the Bill.

Of course, I should say one thing which I think is generally not realized. I started by saying that a distinction has to be made between co-parcenary and joint family. This Bill while it does away with coparcenary, maintains the joint family. It does not come in the way of the joint family being maintained. The only thing is that the joint family in the Mitakshara law will be on the same footing and of the same character as the joint family under the Dayabhaga law. It must not be supposed that because the mitakshara law docs not prevail in Bengal that there is no joint family. There is a joint family. The only distinction will be that the members of the joints family instead of holding their rights as joint tenants, will hold them as tenants in common. That will be the only distinction that will be between the existing law in the Mitakshara and the future law in the Mitakshara.

Now, I come to woman's property. I do not know how many members of this house are familiar with the intricacies of this subject.

So far as I have been able to study this subject, I do not think that there is any subject in the Hindu Law which is so complicated, so intricate as the women's property (An honourable Member: "As the woman herself ") : As the woman herself. If you ask the question, what is *stridhan,* before answering that question, you have to ask another question and find an answer for it. You must first of all ask, 'is she a maiden' or 'is she a married woman'. Because what property is *stridhan* and what property is not *stridhan* depends upon the status of the woman. Certain property is *stridhanam* if she has obtained it while she is a maiden; certain property is not *stridhan* if she has obtained it after marriage. Consequently, if you ask the question what is the line of inheritance to the *stridhan,* you have again to ask the question whether the *stridhan* belongs to a maiden or the *stridhan* belongs to a married woman. Because, the line of succession to the *stridhan* of a maiden is quite different from the line of succession to the *stridhan* belonging to a married woman. When you come to the question of succession to married woman's property, you have again to ask the question, does she belong to the Bengal School or does she belong to the Mitakshara School. If you ask the question whether she belongs to the Mitakshara school, you will never be able to find a definite answer unless you probe further and ask whether she belongs to the Mithila School or the Benares School or some other School. This is a most complicated subject. At the same time, I should like honourable members to bear two things in mind. One is this : so far as women's property is concerned., generally speaking, it falls into two categories. One category is called her *stridhan* and the other is called widow's property. The latter property is property which she inherits from a male member of her family, and according to the existing law property which she owns only during her life time and subsequently that property passes to the reversioners of the male heir. That is the position.

Therefore, so far as women's property is concerned, we have two different sorts of inheritance and two different sets of property, *stridhan* property and widow's property. The heirs to *stridhan* property are quite different and distinct from the heirs to the property she inherits from a male member. The question, therefore, we have to consider in codifying this particular branch of the Hindu Law is this. Are you going to maintain the two principal divisions which exist at present, namely, *stridhan* property and widow's property? Secondly, are you going to maintain the double line of succession; one line of succession

for the *stridhan* property and another line of succession for widow's property? These are the two principal questions which arise when one begin to codify this law. The Committee came to the conclusion that so far as codification was concerned, its purpose would be defeated if we allow the present chaos to continue. We must either decide that a woman will not be entitled to have absolute property or we must decide that a woman should have absolute property. We must also decide what should be the line of heirs for a woman: whether they should be uniform or they should be different. The Committee came to the conclusion that so far as right to property is concerned, there should be uniformity and uniformity should recognise that the woman has absolute property.

I know a great deal of the argument that is always urged against women getting absolute property. It is said that women are imbecile; it is said that they are always subject to the influence of all sorts of people and consequently, it would be very dangerous to leave women in the world subject to the influences of all sorts of wily men who may influence them in one way or another to dispose of property both to the detriment of themselves as well as to the detriment of the family from which they have inherited the family property. The view that, the Committee has taken is a very simple one. In certain matters or certain kinds of property which is called *stridhan* property the Smritis are prepared to invest woman with absolute right. There can be no question at all that a woman has an absolute right over her *stridhan* property. She can dispose it of in any way she likes. My submission to the House is this. If the woman can be trusted to dispose of her *stridhanam* property in the best way she likes, and nobody has ever raised an argument for the obliteration of that rule of Mitakshara, the burden of proof lies upon the opponents who say that the other part of the property, namely, widow's estate, which the woman has inherited, should not become her absolute property. It is they who must prove that while the women are competent to dispose of a certain part of the property which they possess, they are not competent to dispose of a certain other part. The Committee, on a very careful examination, failed to find a satisfactory solution of this dilemma. The Committee, in my judgement, very rightly, came to the conclusion that if in certain cases women were competent and intelligent to sell and dispose of their property, they must be held to be competent in respect of the disposal of the other property also. That is the reason why the Committee have made this rule that women should now possess absolute property.

The other question that arises on this issue, namely women's property is the share of the daughter. I know it would be a very great under-statement to say that this is a ticklish question; it is a very anxious question. There are many people in this world, in India today, both orthodox and unorthodox who cannot help producing daughters; they do. I do not know what would happen to this world if daughters were not born. At the same time, they do not want to extend to the daughter the same love and affection which a parent is bound to extend both to the male and female issue. But, I am not going to use any such high level of argument in favour of the proposition which has been enunciated by the Select Committee; I am going to speak on a much lower tone. The first thing that. I would like to address myself to this house is this. The inclusion of the daughter among the heirs is not an innovation which is made by this Committee. Honourable members who are familiar with the law of inheritance as it prevails both under the Mitakshara and Dayabagha, I am sure, will admit that the daughter is included by both of them under what is called the compact series. As members will know, Hindu heirs are divided into several.categories. The first category, is called, compact series. After that, there is a series of heirs spoken of as *Sapindas,* then comes *samanodaks.* After that comes the *bandhus. Bandhus* are divided into three categories : *Atma bandhus,* Pitru *bandhus* and Matru *bandhus.* The compact series is really a special class of heirs which does not conform strictly to the basic principles of heirship surrounded round *gotraja, samanodaka* and *bandhus,* because it is a mixed category. It is a category which is based on double foundation. It is based on propinquity; it is also based on religious efficacy. They do not conform to any of the criteria which have been laid down for determining the categories of *sapindas, samanodakas* and *bandhus.*

If you take both the laws, the Mitakshara as well as the Dayabhaga, you will see that the daughter is included within the category known as compact series. The only distinction between the Mitakshra and the Dayabhaga is this. According to the Dayabhaga the necessary element in heirship is the capacity to offer oblation. Consequently the Dayabhaga makes a rule between a daughter who is unmarried, a daughter who is married, a daughter who is married but has a son, and a daughter who is a widow. They give preference to a daughter who is married and has a son. Next to that they give preference to a daughter who is married. The unmarried daughter comes

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third. But it is within that category, the reason being that a daughter who is married and has a son, is ready there to offer oblation, because her son can offer oblation. A daughter who is unmarried, has no son, and therefore his possibility of offering an oblation does not exist. That is why she has been kept down. But the point I want to emphasize, and which I want the House to bear in mind is that there is no innovation as such in the inclusion of the daughter in the category of compact series. She has always been there both according to the Mitakshara and according to the Dayabhaga. The only innovation which the Bill seeks to make is to raise the status of the daughter. Under the Bill she becomes simultaneous heir, along with the son the widow, the widow of the predeceased son, son of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.

The point is this that originally, and particularly according to the Mitakshara Law, no female was entitled to any kind of share at all. This law was changed in the year 1937 whereby the widow of the deceased, the widow of the predeceased son and of his grandson and great-grandson—they were all made simultaneous heirs along with the son. The only omission that was made was in respect of the daughter. The government at that time was not prepared to lend its support to put the daughter on the same level as the widow and the widows of the predeceased son and the predeceased son's son. This is therefore the only innovation that the Bill makes. It merely raises it up in the order of heirs. It is not that for the first time she has been made an heir.

Now I come to the question of her share. As the Rau Committee has pointed out, and as many of the witnesses who know the Shastras have pointed out, that it is impossible to deny the fact that the daughter according to the Smritis was a simultaneous heir along with the son and that she was entitled to one-fourth share of her father's property. That has been accepted as a text from the Yagnavalkya and also from Manu. I once counted 137 Smritis and I do not know why our ancient Brahmins were so occupied in writing Smritis and why they did not spend their time doing something else it is impossible to say, assuming that that occupation was a paramount occupation of the day. There is no doubt that the two Smritikars whom I have mentioned—Yagnavalkya and Manu, rank the highest among the 137 who had tried their hands in framing Smritis. Both of them have stated that the daughter is entitled to one-fourth share. It is a pity that somehow

for some reason custom has destroyed the efficacy of that text: otherwise, the daughter would have been, on the basis of our own Smritis, entitled to get one-fourth share. I am very sorry for the ruling which the Privy Council gave. It blocked the way for the improvement of our law. The Privy Council in an earlier case said that custom will override law, with the result that it became quite impossible to our Judiciary to examine our ancient codes and to find out what laws were laid down by our Rishis and by our Smritikars. I have not the least doubt about it that if the Privy Council had not given that decision, that custom will override text, some lawyer, some Judge would have found it quite possible to unearth this text of Yagnavalkya and Munusmriti, and women today would have been enjoying, if not more, at least one-fourth of the share of their property.

The original Bill had raised the share of the daughter to one-half. My Select Committee went a step further and made her share full and equal to that of the son.

I am not entitled to disclose what happened at the Select Committee and how this provision came to be made. I am perfectly .....

Shrimati Renuka Ray (West Bengal: General): Unanimously !

Mr. Deputy Speaker : Was it a compromise between twice the share of a son claimed and half the share provided in the Bill ?

The Honourable Dr. B. R. Ambedkar : It was not a compromise. My enemies combined with my enthusiastic supporters and my enemies thought that they might damn the Bill by making it appear worse than it was.

Shri. H. V. Kamath : Have you any enemies.

The Honourable Dr. B. R. Ambedkar : However, this is the position, namely, so far as the daughter's share is concerned, the only innovation that we are making is that her share is increased and that we bring her in the line with the son or the widow. That also, as I say, would not be an innovation if you accept my view that in doing this we are merely going back to the text of the Smritis which you all respect.

I might also say that in discussing this question about the share of the daughter, myself, and the members of the Law Department examined every system of inheritance. We examined the Muslim system of inheritance : We examined the Parsi system of inheritance : We examined also the Indian Succession Act and the line of succession

that had been laid down and we also examined the British system of inheritance, and nowhere could we find any case where a daughter. was excluded from a share. There is no system anywhere in the world where a daughter has been excluded.

Now, Sir one question has been brought forth constantly—that the giving of the share to the daughter means disruption of the family. I must frankly confess that I cannot appreciate the force of that argument. If a man has twelve sons and one daughter, and if the twelve sons on the day of the death of the father immediately decide on partition and obtain a twelfth of the total property of the father, is the partition going to be much more worse, if mere was a daughter, the thirteenth, who also demanded a share ?

Twelve share or 12 fragments is not a better situation than 13 fragments. If you want to prevent fragmentation we shall have to do something else, not by the law of inheritance but by some other law, whereby property shall not be fragmented so as to become less useful from a national point of view for purposes of national production.

Shri T. A. Ramalingam Chettiar (madras : General): Is the Hindu Code applied to agricultural land ?

The Honourable Dr. B. R. Ambedkar: It is not. I am saying generally.

I think I have, so far as I know, exhausted what I have to say on the various points of controversy which I had seen raised both by members of this House as well as by the members of the public. I hope that the clarification which I have given on the various points will allay the fears of members who are not well disposed towards this measure. They will realise that this is in no sense a revolutionary measure. I say that this is not even a radical measure and I should like to draw the attention of the members of this House to one important fact, namely the consitution and composition of the Rau Committee. There were four members of that committee but I should like to point out that two of them who have signed the report are far from radical members of the Hindu community. My friend Mr. Gharpure, whom I have known for a long number of years, is one of the most conservative members I know .....

Shri H. V. Kamath : Politically or Socially ?

The Honourable Dr. B. R. Ambedkar : Politically and socially also. In fact I have no hesitation in saying that he may on certain

occasions find it very difficult to touch me even with a barge pole. He is so conservative. My friend Mr. T. R. Venkatarama Sastri is no doubt a liberal but he is certainly not a radical so far as I know. If these people conservative in their attitude have signed the report I think we can take it for granted that the measure to which they have put their signature could not be revolutionary and certainly could not be destructive of the foundations of the Hindu Society. So far as I am concerned I am a very conservative person : Although some people may not accept that fact, I am indeed very conservative. All I say is that I am a progressive conservative and I should like to tell the House one important fact which I think every one of us must bear in mind, particularly the conservative members of this House. The great political philosopher Edmund Burke who wrote a big book against the French revolution because of its radicalism and revolutionism did not forget to tell his own countrymen who were very conservative, one very important truth. He said that those who want to conserve must be ready to repair and all I am asking of this house is this : that if you want to maintain the Hindu system, the Hindu culture, the Hindu society, do not hesitate to repair where repair is necessary. This Bill asks for nothing more than repairing those parts of the Hindu system which are almost become dilapidated.

Shri H. V. Kamath : Sir, on a point of reminder, the Honourable Dr. Ambedkar promised some citations from the Smrities. Will he keep promise ?

The Honourable Dr. B. R, Ambedkar : I shall do so at the end. Fortunately for me I have secured a copy of Mr. Dwarkanath Mitter's own book “Rights of Hindu Women”. I was going to cite certain text, which show that the rights which the Vedas had given to women were taken by the Smrities in the meantime and some other smrities tried to restore those rights. I shall cite them in the course of my speech.

Shri Deshbandhu Gupta : Could the Honourable Minister enlighten the House as to the evidence which was produced before the Select Committee?

The Honourable Dr. B. R. Ambedkar : As Honourable Members know two bodies came to us and asked for evidence to be taken. The Committee decided that their evidence be taken. One body came and one body sent in a written reply. That body was the Dharma Nirnaya Mandal. In general they are absolutely in agreement with the provisions contained in the Bill. The other gentleman who came obviously was not.

Mr. Deputy Speaker : Motion moved:

"That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration".

Two amendments were not pressed. What about the next amendment ?

Pandit Thakur Das Bhargava : Sir, I am not in a position to move any of my amendments.

Mr. Deputy Speaker : As I have already stated in answer to the suggestion made by the Honourable the Mover of the Bill I shall allow those motions to be made without any speeches at the time of moving the motion. After all the amendments are moved whichever are relevant and are admitted, there will be discussion on them as also on the original motion.

Shri Deshbandhu Gupta : On a point of order, Sir, is it open to an honourable Member to say that he is not in a position to move his amendments ?

Mr. Deputy Speaker : It is.

Mr. Naziruddin Ahmad : Sir, I am directed .....

An Honourable Member : By whom ?

Mr. Naziruddin Ahmad : I am directed to move my amendment without a speech at the first instance. (*An honourable Member;* "Who has directed you?") I am directed by the Honourable Deputy Speaker. I find that honourable members are extremely impatient.

Shri R. K. Sidhva (C. P. and Berar: General): No, we are not. Proceed.

Mr. Naziruddin Ahmad : I have been directed, I repeat, to move my amendment without a speech. On account of the eloquence of my honourable friend the Law Minister I was already speech less .....

Shri L. Krishnaswami Bharathi : You are already disobeying your mandate.

Mr. Naziruddin Ahmad : There are the bright ladies who have also created a profound impression upon me and just before I stood up Pandit Thakur Das Bhargava, a very powerful member, said that he was not in a position to move.

Mr. Deputy Speaker : Is this preamble necessary for moving his amendment ?

Mr. Naziruddin Ahmad : I was already rendered speechless and that is why I was expressing my gratitude for suggesting that I should not make any speech.

Mr. Deputy Speaker: The honourable Member will speak later.

Mr. Naziruddin Ahmad: Sir, I beg to move with considerable amount of nervousness :

> "That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949."

Mr. Deputy Speaker: Amendment moved :

> "That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949."

Shri B. Das: Sir, as this is a dilatory motion I suggest it may be ruled out of order.

Shri Mahavir Tyagi: On a point of order; in the morning also there was some ruling about dilatory motions. I submit, Sir, that they are the privilege of a Member. Although I stand by Dr. Ambedkar in many respects with regard to this Bill, I submit that dilatory motions are the privilege of those Members who are not in power—of individual Members as well as parties. Let it not be tabooed. It is a democratic right of Members to delay business if they choose to do so. Therefore a motion should not be disallowed because it is considered to be diatory. Dilatory motions are the privilege of a House of democracy.

Mr. Deputy Speaker: I do not see any point of order in what Mr. Tyagi has said. He wants full discussion to be allowed on this. As regards the point raised by Mr. B. Das I am not able to understand it. Does he mean to say that under any of the Rules such a motion is not allowable ? If so when Report is presented, the procedure is this. (*An honourable Member:* "What Rules are they ?") The rules that we adopted last session.

The Rule says :

> "If the member in-charge moves that the Bill be taken into consideration, any member may move as an amendment that the Bill be re-committed or be circulated or re-circulated for the purpose of obtaining opinion or further opinion thereon."

Therefore under the Rules this kind of motion is allowed. I want to know how I am expected to disallow this motion.

Shri B. Das : I am aware of that Rule. But I was guided by the ruling of this morning that no dilatory motions would be allowed. I therefore raised the point of order.

The Honourable Dr. B. R. Ambedkar: May I be permitted to say something ? I think the point raised by my friend Mr. B. Das is a perfectly correct point of order, because of this . . . . .

Honourable Members : No.

Pandit Thakur Das Bhargava: When the Deputy Speaker has given a ruling it cannot be questioned.

Mr. Deputy Speaker: The honourable Members will not speak all together. They will rise in their seats and speak one at a time. Let me hear the Honourable the Law Member. I will allow an opportunity to every Member to speak on this point provided he is able to make a proper contribution to the debate. Nobody need be impatient.

The Honourable Dr. B. R. Ambedkar: Sir, as you will recall the motions which are permissible under the Rules of Business fall into two categories : One set of motions are such that the Speaker must put them to the House; the other set of motions are such that the Speaker must first be satisfied that they are proper motions before he can put them to the House. Let me illustrate this by reference to a motion for adjournment. Under the Rules every honourable Member is permitted to move an adjournment motion. But merely because a certain member has tabled an adjournment motion that in itself does not authorise, enable or empower the Speaker to put it to the House, because it is laid down that unless the motion is held to be admissible by the Speaker the motion shall not be put. I can give various other illustrations. With regard to a motion like this, namely, the adjournment of the consideration of the Bill and circulations for further opinion, my submission is that such a motion falls within that category of motions where the Speaker is required to be satisfied before he can put the motion to the House. It has been the universal practice in this House that any such motion for the postponement of the consideration of the Bill or for circulation, made after the Select Committee has made its Report, is *prima facie* dilatory. Unless the member who makes the motion advances substantial reasons for such a motion and the Speaker is satisfied that the reasons advanced are substantial such a motion will not be admissible. There are many rulings in these books but I should like to draw attention to ruling No. 1 in book No. 1. In regard to this motion no substantial reasons have been given.

An Honourable Member: But he has not spoken at all.

Mr. Deputy Speaker: Let the honourable the Law Member conclude.

The Honourable Dr. B. R. Ambedkar : I was only drawing your attention to a ruling (No. 1) in this book. There are various others also. It says:

> "During the discussion on the Cotton Excise Duty Abolition Resolution a motion was moved to adjourn the debates on the Resolution. (*Which practically means sending it away for circulation or to leave it up.*)

"The President while accepting the motion on this particular occasion without creating a Precedent remarked :

"The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantial grounds."

Pandit Thakur Das Bhargava: The ruling says it is not a precedent but you want to make a precedent of it.

The Honourable Dr. B. R. Ambedkar: The President says 'I am ruling but I am not creating a precedent.'

Pandit Thakur Das Bhargava : In this matter I would call your attention to page 81 of ' Decisions of the Chair ' which says that there are certain motions which can be stated to be of a dilatory nature. The question of circulation is not certainly one of such nature. But there are motions of a dilatory nature and it is in the discretion and power of the Chair to allow them or not to allow them. One page 81 of this book in regard to re-committal of motions it has been held that though to start with, it may be regarded as a dilatory motion, if something happened in the Select Committee or some events have transpired since, the Chair is perfectly authorised to say that it is not a dilatory motion. Now the honourable Member has not been asked what the reasons are and before that my honourable friend gets up and says that it is a dilatory motion. It is absolutely wrong for him to suggest at the very outset that it is a dilatory motion. A circulation motion is not a dilatory motion. Unless the Speaker comes to the conclusion that nothing has transpired in the Select Committee or no further events have taken place which justify him to retard that motion I think the Speaker is not entitled to say that any of the motions are also dilatory. Ordinary motions countenanced by the rules cannot be regarded as dilatory motions.

Mr. Naziruddin Ahmad: Sir, I think matters can be cut short in a minute. The precedent relied upon by the Honourable the Minister of Law does not apply to this situation at all. The heading is, "Adjournment of Debate", ...

The Honourable Dr. B. R. Ambedkar: This is an adjournment of debate, if the motion is carried.

Mr. Naziruddin Ahmad : No, it is entirely different as I shall show. The sub-heading is "Adjournment of Debate: Motion when allowed to be moved:". I do not move for an adjournment of this debate, which certainly could be done under amendment No. 2, that is:

"That the consideration of the Bill, as reported by the Select Committee be postponed."

My object is continuance of the debate, consideration of the motion, and I want the consideration to be taken along with my motion. A further reading of the ruling relied upon by Dr. Ambedkar will make it absolutely clear:

> "During the discussion on the Cotton excise Duty Abolition Resolution a motion was moved to adjourn the debate on the Resolution.
>
> "The President while accepting the motion on this particular occasion without creating a precedent, remarked : The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantive grounds."

As I understand it, there was at the time one motion before the House and there was another perhaps more interesting or more important in advance. A Member proposed the adjournment of the discussion of a resolution which was under consideration so that another more interesting Motion may be taken up. It was the attempt to adjourn the first Motion that was said to be unacceptable. Here I do not propose adjournment of the debate.

The Honourable Dr. B. R. Ambedkar: It all comes to that.

Mr. Naziriruddin Ahmad: Here we are concerned with the interpretation of Rule 52. The plain reading of this rule would show that the motion is in order. Without abrogating the rule it cannot be held that it is out of order.

Pandit Hirday Nath Kunzru (U. P. : General): This Bill admittedly has created a great deal of feeling and it would be most undesirable to add to it by restraining the discussion in any way. I think the only way of making every section of the House feel that full opportunity was being given to it to express its opinion on this and to allow the discussion. Whatever our individual views regarding the merits of the Bill before us may be, that should be no ground for opposing the Motion of my honourable friend Mr. Naziruddin Ahmad.

Dr. Ambedkar quoted a ruling of the Chair in regard to a matter that is not on all fours with that under consideration now. In the first place the ruling was given in regard to a Resolution and not in regard to a Bill. In the second place, the rules lay down clearly that so far as a Bill is concerned a Motion may be made not merely that the Bill be circulated but that it may be recirculated, not merely that it should be referred to a Select Committee but that it should be recommitted to it. The language is therefore absolutely clear. If, whenever a Motion is made for the re-committal or re-circulation of a Bill, it is opposed on the ground that it is a dilatory Motion, the clear

rights, the rights most unequivocally given to Members by the Rules will be completely *null and void.* We may feel impatient that a Motion like that of Mr. Naziruddin Ahmad may be ruled out. We may be ready to turn it down, but that is no reason for not allowing it to be moved. In my humble opinion, it is most assuredly in order and we shall be doing a great injustice if in order to pass a law in which we are keenly interested we whittle down the rights of Members and try to interpret the Rules in a manner convenient to whatever may happen to be the majority at any particular time.

Shri L. Krishnaswami Bharathi : Sir, the only point is that under Rule 52(2) no doubt every Member has a right, but the important point is that it is subject to admissibility which is at the discretion of the Speaker. All that Dr. Ambedkar said was, that we have no doubt the right to ask interpellations, but that certainly does not mean that all interpellations should be put on the Agenda Paper; it is subject to admissibility. There being the discretion, all that you have got to decide now is, whether it is in the nature of a dilatory Motion. You may ask Mr. Naziruddin Ahmad to give his reasons. If you are satisfied that he has a good ground to move his Motion, then you have got the discretion to allow him to move it. Therefore, it is now for you, Sir, to ask him and be satisfied; and if you are satisfied that he has valid grounds, certainly he can move the motion. That is a point which Dr. Ambedkar raised. Every Member is entitled to speak and take his chance. All that you are concerned with, is a matter of procedure; the procedure being that a Motion is subject to admissibility, which is within your discretion. I may suggest that you may ask Mr. Naziruddin Ahmad to give his grounds and it is ultimately for you to decide whether it is in the nature of a dilatory motion, in which case you have to rule it out of order; but if you are satisfied about the grounds then, you may allow the motion to be moved.

Mr. Tajamul Hussain *rose—*

Babu Ramnarayan Singh : Sir, I have something important to say.

Mr. Deputy Speaker : On the point of order ?

Babu Ramnarayan Singh : Yes, Sir.

Mr. Deputy Speaker : All right.

Mr. Tajamul Husain (Bihar : Muslim): Sir, I caught your eye first. I have also got a point of order.

Mr. Deputy Speaker : After this point of order is disposed of Mr. Tajamul Husain's point of order will be considered.

Babu Ramnarayan Singh : Sir, you have already quoted the rule. I am sure no ruling can be given by any President against a Rule. The thing is this : there may be a subject under discussion in the House on which opinions may be divided—it is quite natural. One section of the people may look upon the subject as a boon, and the other section may look upon the subject as a danger, as a plague, as a curse. That section of the people who look upon the subject as a curse has the right not only to delay the Motion, but even to kill it. Here also, I think this section has the right to move the Motion and I think justice demands that they may have all the privileges and all the rights.

Mr. Tajamul Husain *rose—*

Mr. Deputy Speaker : There is another point of order which the honourable Member is raising, I will come to it next.

I am afraid the honourable Member Mr. Naziruddin has himself invited all these points of order because he started one this morning. Apart from any technicalities we may ask Mr. Naziruddin what his purpose is and what important points he has in view in making his motion for circulation.

Mr. Naziruddin Ahmad : I think this question .....

Pandit Hirday Nath Kunzru : May I ask you, before Mr. Naziruddin Ahmad replies, whether you have come to the conclusion that the right of the member to move the re-circulation of the Bill is subject to the discretionary power of the Chair ?

Honourable Member *rose—*

Mr. Deputy Speaker : Order, order. Members must respect the Chair. When I stand up, they will kindly sit down. I think I have heard sufficiently. Is it not open to the Chair to ask for reasons ? It does not mean that I have come to a conclusion one way or the other. I am trying to make up my mind. I have heard Mr. Bharathi's point. Apart from the question as to whether the Chair, under the rules, has got the right to allow or disallow, I want to know on what grounds—if there are any—this motion should be accepted. After hearing that, I shall give my ruling.

Mr. Naziruddin Ahmad : My reply to that is two-fold. The first is the admissiblity of the motion as a matter of law, and secondly as to the reasons for the motion, they are matters of merit. At present, I have been asked by the Chair not to make a speech and I have been entirely prevented from giving the arguments on the merits as

to why this motion should be accepted. I submit a distinction should be made between the legality and admissibility of the motion and the grounds on which it is based for the acceptance of the same by the house. I submit that at this stage, in order to admit the motion which I have made, I think, Sir, I may not say anything at all.

Mr. Deputy Speaker : I have heard sufficiently on this matter. So far as Mr. Das, point that this motion is one of a dilatory nature, I consider that this motion differs materially from the one referred to by the Honourable the Minister for Law. He quoted the rulings of the Chair and gave the instance of ruling No. 1 on the postponement or adjournment of the debate. When motions for postponement for which there are no particular rules of procedure are made, it is open to the Chair to treat them as dilatory motions and require to be satisfied on what substantial grounds an adjournment of the debate is necessary. So far as. the present motion for circulation is concerned, it is one for which provision is made in Rule 52(2). The honourable the Minister for Law referred to the analogy of adjournment motions, but regarding adjournment motions there are specific rules laid down here, giving power to the Speaker to come to a conclusion as to whether *prima facie* a motion is in order or not. I am referring to rule 36. The right to make adjournment motions depends upon certain conditions as in the case of questions. Unless a question comes under one or other categories provided for under the rules it is open to the Speaker to disallow it; similarly, with respect to adjournment motions also, there are six conditions which must be satisfied. There is provision also for asking for leave. First of all, it is open to the Chair, if it so chooses, to say that a motion is not in the public interest, it is old and so on. Secondly, even if he chooses to admit it, he must ask if the motion has the support of at least twenty five members of the House; then leave is granted. In such cases special provisions have been made. This present motion for circulation does not fall in the same category as the others.

As regards ruling 120 on page 81, it refers to Select Committee motions. I do not find any ruling of the Chair till now, in either of these two books “Decisions of the Chair” in point stating that a motion for re-circulation is a dilatory motion. In these circumstances, I do not want to curtail the powers of the house. It does not mean, if I allow the motion, the House is obliged to accept it. Even if it is moved, the House may reject it after debate if it is not satisfied. Under these circumstances, inasmuch as the rulings are not clear on this point,

I do not want to throttle this motion. The honourable Member may proceed. I have already said that honourable Members will first move the motions standing in their names and then there would be a debate on all the motions together. The next amendment stands in the name of Pandit Mukut Bihari Lal Bhargava and Shri Jhunjhunwala.

Pandit Mukut Bihari Lal Bhargava : The motion moved by my honourable friend Mr. Naziruddin Ahmad is substantially the same. Therefore, I would like to support his motion.

Mr. Deputy Speaker : He need not give his reasons for not presenting. What about Mr. Jhunjhunwala ?

Shri B. P. Jhunjhunwala (Bihar : General): I join my friend Mr. Bhargava.

Mr. Deputy Speaker : So he does not press. Nos. 7 and 8, I have already said are out of order. The scope of the Bill is confined to the provinces and not to any acceding State.

Mr. Naziruddin Ahmad : In regard to States which have entirely united themselves within the Indian Dominion, they stand on a different footing. The Eastern States have combined with the province of Orissa. They are now part of India. The bill will apply to them.

Mr. Deputy Speaker : I can understand it only this way,—Whether they have become part of a province or not if they are parts of a province, the Bill will apply. It is not necessary that a copy of the Gazette should be sent to every village and every corner of the country. If the State has become a part of province, it takes all the rights and liabilities of the province. I do not see any reason why the Bill should be once again circulated. Therefore I rule admenment No. 7 is out of order. No. 8 is also out of order. No. 9, does Mr. Bhargava move ?

Pandit Thakur Das Bhargava : I have already said that I do not propose to move.

Mr. Deputy Speaker : Then the next amendment. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move as an alternative to the one which I have already moved:

> "That the Bill be re-committed to the same Select Committee, to which it was sent, for a further report thereon with reference to the original Bill which was referred to it on the 9th April, 1948."

Mr. Deputy Speaker : Amendment moved :

> "That the Bill be re-committed to the same Select Committee to which it was sent for a further report thereon which reference to the original Bill which was referred to it on the 9th April 1948."

Shrimati Renuka Ray : In view of the Speaker's ruling, it is out of order. It goes against the Speaker's ruling.

Mr. Deputy Speaker : The re-circulation motion is before the House. Why should the House not consider this motion also after all ?

Shrimati Renuka Ray : It goes against the Speaker's ruling of the other day.

Mr. Deputy Speaker : May I ask the Lady Member how it goes against the Speaker's rulling ?

Shrimati Renuka Ray : The Speaker ruled that the Bill is the same as committed to the Select Committee and therefore there cannot be a motion for recommittal to the Select Committee. There has been no substantial change in the Bill.

Mr. Naziruddin Ahmad : There are many substantial changes as I shall show.

Mr. Deputy Speaker : No speeches across the benches please. So far as the arguments advanced by the Lady Member are concerned, what I feel is this. The Speaker certainly said that the Bill considered by the Select Committee is not different from the one committed to it. But recommittal may be on various other grounds. Therefore, unless any objection is taken on other grounds

Shrimati Renuka Ray : The words "original Bill" are there.

Mr. Deputy Speaker : Original Bill is the same as the other Bill. Therefore, he has said "original Bill". We will drop the word "original".

Shrimati Renuka Ray : I would humbly submit that the word "original" is there. Therefore, we cannot drop it now from the motion,

Mr. Deputy Speaker : The Speaker ruled that the Bill that came out of the Select Committee was the original Bill and therefore there is no harm in using the word "original". The objection taken was that the original Bill was not considered by the Select Committee. Hon'ble the Speaker ruled that it was the original Bill itself that was considered by the select Committee. Therefore, the honourable Member has stated in his amendment that the original Bill be recommitted to the Select Committee. The argument advanced by the Lady Member is against her own objection. I find there is nothing wrong in this motion.

Shri R. K. Sidhva : The Mover's intention is quite different. He does not consider this Bill as the original Bill and therefore he wants this to be sent to the same Select Committee.

Shri H. V. Kamath : Though the intention of the Mover is clear, I think my honourable friend Pandit Naziruddin Ahmad, in drafting the amendment has slightly over-reached himself. I would suggest to him that he may reconsider the whole matter and bring it up again sometime later.

Mr. Deputy Speaker : I do not consider that the use of the word 'original' affects the position at all. On the other hand, the Speaker's ruling was that it was the original Bill that was referred to the Select Committee and that it was that Bill that came back in a modified form. I cannot accept that as an objection. There is no good, spending more time over this matter.

Amendment No. 13 may be moved.

Pandit Mukut Bihari Lal Bhargava : My amendment is substantially the same as the one moved by Mr. Naziruddin Ahmad. I will speak in support of it and not move mine.

Mr. Deputy Speaker : The honourable Member will then have to take his turn after that of the Movers of the other amendments.

Amendment No. 14 is not moved.

Mr. Naziruddin Ahmad : I intend moving my next amendment if my amendment No. 10 is passed.

Shrimati Renuka Ray : I rise to a point of order. Amendment No. 15 goes against the Speaker's ruling.

Mr. Deputy Speaker : The Speaker's ruling does not cover this point. This House may not be satisfied with the re-arrangement made by the Select Committee. Therefore the original motion that it be referred to the Select Committee can stand. There is no point of order so far as this matter is concerned.

Mr. Naziruddin Ahmad : Then, Sir I move:

> "That the Bill be re-committed to the Select Committee with instructions for report on the original Bill as presented to the House restoring the original arrangement of self-contained separate Parts and Chapters for enactment separately".

Mr. Deputy Speaker : I am afraid, I must disallow this amendment. As there can be no objection to the re-arrangement of Parts and Chapters, I rule this amendment out of order.

Shri B. Das : Sir, before the next amendment is moved, I want your ruling as to whether one member can move five amendments ?

Mr. Deputy Speaker : Alternative amendments can be given notice of. The honourable Member has been sufficiently long in this house to know this.

In the next amendment of Mr. Naziruddin Ahmad, the only adddition is of the words "31st December 1949". I do not think he need move amendment No. 16.

Mr. Naziruddin Ahmad : The Select Committee referred to there is a separate select committee.

Mr. Deputy Speaker : I do not think I can allow this amendment to be moved. The honourable Member must have given the names of the Members for the Select Committee at the time of giving notice of the motion.

Mr. Naziruddin Ahmad : I have divided it into two parts. First of all there is the idea of the Select Committee. If it is acceptable . . .

Mr. Deputy Speaker : The house cannot be asked to give its opinion first in a matter of this kind. As the honourable member has not given the names of the Members for the select committee to the Chair earlier, his amendment is ruled out of order.

Discussion on the general motion may now be resumed. I call upon Seth Govind Das to speak now.

Seth Govind Das : *Sabhapathiji* . . . . .

Shri L. Krishnaswami Bharathi : During general discussion the honourable Member who has moved an amendment has the first right to speak.

Mr. Deputy Speaker : The honourable Member will leave it to the Chair. The Chair knows the procedure.

Mr. Tajamul Husain : I have been trying to raise a point of order for a long time. Sir, I shall be very brief. The honourable member Mr. Naziruddin Ahmad who is very keen on punctuation, on commas and full stops etc. has given notice of this amendment that this Bill be circulated. This is absolutely out of order. The honourable member should have worded his amendment thus. This Bill be re-circulated. That is my point of order. This is what the relevant rule says : 'any member may move as an amendment that the Bill as reported by the Select Committee be re-committed or re-circulated as the case may be for the purpose of obtaining opinion or further opinion thereon'. Therefore, the honourable member who is very keen on commas and full stops etc. should have put the words "re-circulated for further opinion". My point of order, therefore, is that as the wording of this amendment is not according to the rules, it may be ruled out of order.

Mr. Deputy Speaker : It is true that the honourable member who has tabled this motion, who is ordinarily careful with reference to punctuations has committed there error of not putting the word 're'. I ought not to decide it is a matter of form, but as one of substance and this motion for circulation comes after the report of the Select Committee has been received. Therefore, it means under the circumstances only 're-circulation'. I have already given the ruling. The ruling will stand. The debate will be continued by Seth Govind Das.

4 P.M.

Shri V. S. Sarwate : Mr. Deputy Speaker, Sir, I want to bring to your notice that I have already given a motion for re-circulation and it is based on those two motions. I do not know, why it was omitted in the consolidated list. These two motions are dated the 21st August 1948. I do not wish to take further time of the house. I will read the motion so that it can be taken up for further discussion. The motion stands thus ;

> "That the Bill as reported by the Select Committee be re-ciurculated for the purpose of obtaining further opinion thereon"

Mr. Deputy Speaker : Have honourable members got copies of this notice? (*An honourable Member:* "Yes, Sir") I will ask the honourable member to read it out.

Shri V. S. Sarwate : The motion runs as follows :

> "That the Bill as reported by the Select Committee be re-ciurculated for the purpose of obtaining further opinion thereon"

Mr. Deputy Speaker : When was this notice of amendment given ?

Shri V. S. Sarwate : Notice was given on 1st August 1948. The amendment forms part of Supplementary list No. 2.

Mr. Deputy Speaker : The motion was made on the 1st August and the 12th of August is the date of the Select Committee's report and possibly a week later it was presented to the House.

Shri L. Krishnaswami Bharathi : The motion was made on 31st of August.

Mr. Deputy Speaker : The motion need not be made. It is after the presentation of the report. But all notices lapse after the session is over. A fresh notice should have been given. I do not know if honourable Members have got copies of this.

Shri Jaspat Roy Kapoor : I have got a copy of this. It is a consolidated list; Notice of Amendments..... This was sent from

the office on the 28th August 1948. There are twenty-four amendments mentioned in this list and Mr. Sarwate's amendment stands as the fourth on this list.

Mr. Deputy Speaker : These notices were all for the last session. These notices have all lapsed at the end of that session. Only those amendments, copies of which have been placed on the table before each honourable Member now, these only will have to be taken for consideration. The other notices have lapsed. Therefore further debate will be continued by Seth Govind Das.

*** Seth Govind Das :** *(English translation of the Hindi speech)* Mr. Deputy Speaker, I find that the supporters and opponents of this Bill can be divided into four groups. One of the opponent groups consists of those persons who oppose this measure with the same viewpoint as was exhibited by certain antagonists at the time of enactment of law for the abolition of *Sati,* the law which was got passed by the late Shri Ishwar Chandra Vidyasagar for widow-remarriage and the measure put forth by Mr. Sharda for the prevention of child marriages being brought on the Statute Book. At the time of Sharda Bill, I was a member of the Council of State and I personally know the opposition that was then meted out to this Bill. This group is of the opinion that no change can be made in that what has been prescribed in the text of our *Vedas, Shastras* and *Smritis.* I do not belong to that group. It would be noticed even from reference to our *Dharmashastras* that if one *Rishi* (Sage) said something from time to time, the other said something else. Had this not been the case, our *Rishi* would not have written. *Smritis* numbering more than one hundred. If you go through these *Smritis,* you will find that the tenets laid down in one *Smriti* differ those contained in the other. Each of these *Smritis* enunciates a different principle. Then just as I have stated, I am not one of tliose groups who have opposed almost all the reforms that have been introduced hithertofore.

The second opposing group is that which on the one hand believe that there is obviously a necessity for making reforms in these affairs, but on the other hand, it holds that this is not the proper time for the enactment of such a legislation. This should be brought forth only after the new elections have taken place, and when our new representatives have been elected. I would like to say that there will

*C.A. (Leg.) D., Vol II, Part II, 24th February 1949, pp. 861-71.

not be any harm if instead of making any change in the Hindu Law at present, we do this even three years hence. This is a subject over which the whole country has got to think; all of us have to think, all of those who are sitting here have to think and those who are likely to occupy these seats in this House in the future shall have to think. Therefore, I feel that there is a good deal of force in the arguments advanced by the second group that it is neither the proper time nor the place to bring forth such a measure, and for this reason, I would urge that we should consider this aspect.

Just as I have stated, even the supporters of this Bill can be divided into two groups, one which does not at all like to see any of our old traditions, and does not want to recognise the fact that this country is one of the ancient countries having a brilliant past, glorious history, high culture and great traditions. Such type of reformers do not at all care as to what our past heritage is and how are we to reconstruct our country today ? These reformers have been considerably influenced by the Western education, and have scant regard for the ancient history, culture and even the old traditions in the sphere of social reforms. I would like to say that if such sort of reforms are introduced in this ancient country, this *Bharatvarsha* (India) will not longer remain as *Bharatvarsha*—but it would become something else. The other group of reformers is that which believe in the necessity of reforms being introduced but after having due regard to our ancient history, culture and traditions. I do not belong to the first group but to the second. I admit that it has become absolutely necessary to introduce reforms, but in spite of all this, we should carry out the reforms after keeping in view our old traditions, ancient culture and civilisation.

At this time when we are framing our Constitution, when we have already passed the clauses relating to the fundamental and justiciable rights and when it is hoped that our Constitution will be finally adopted sometime during the period intervening between the 16th of May and 15th of August next, it would have been quite in order had this measure been brought forth in consonance with the provisions of the new Constitution. Today when we call our country a ' Secular State ', when we admit that all the persons in this country—whatever religion they believe in, to whatever community they may belong, may be Hindu, Muslim, Sikh, Parsi—whoever he may be—he should be given equal rights of citizenship. Therefore, I would say that the Honourable

Dr. Ambedkar should have presented to this House such a Bill which would have concerned not the Hindu's alone, but would have been made applicable to all the citizens of this country. While admitting this country as a 'Secular State', the idea of introducing a Hindu Code Bill seems to me quite inappropriate. Then again if we now see this Bill, we shall have to admit this that it .....

Shri R. K. Sidhva : The Honourable Dr. Ambedkar referred to the ancient *Shastras.* You may also point out which of the *Shastras* go against the provisions of Hindu Code ?

Seth Govind Das : Now if we see this Bill, we find that it contains many such Clauses to the acceptance of which there should not be any objection. And if at all this Bill is not postponed but is passed into Law, I am sure we shall accept these Clauses without indulging into any sort of controversy. But along with this, we also feel that it contains many such Clauses the acceptance of which is succeptible of being considerably harmful. The Honourable Dr. Ambedkar has himself admitted today that many of the Clauses arc of controversial nature and he has also thrown sufficient light on these controversial issues. The first controversial issue is ' marriage ' and ' divorce ', If we take up the ' marriage ' and 'divorce', I would be prepared to accept one thing at least that we should make some such change in our legislation which would do away with the Caste System. And if any *Brahmana* wants to marry a *Sudra* or a *Sudra* a *Brahmana;* or setting aside the case of *Brahmana* and a *Sudra,* if any Hindu wants to marry a Muslim or any Muslim a Hindu, or if the members of any community wants to have inter-communal marriages, there should not be any bar to such marriages being solemnized. This Caste System has ruined our country. It has resulted in the remification of our country and society into small parts—may even the smallest sections. All of us are very well aware of the disabilities that exist in the marginal sphere today and which are the outcome of this dismemberment. The old people also know this and even today—they look upon the solemnization of such marriages with abhorence. They say that they have to marry their sons as well as daughters against their wishes. But I fully support such a freedom being given. I am even a supporter of 'divorce'. I would submit that notwithstanding the fact that no 'Marriage Code' has so far been invented in the world which may be regarded as the panacea for the removal of all ills, still we have got to see that if the husband and wife cannot live a harmonious life, they should be given the right of divorce. The Honourable Dr. Ambedkar

has stated that the system of divorce already prevails among 90 per cent of the people in this country. These 90 per cent. are called *Sudras*. I, on my part, do not find any difference between the *Brahmana* and *Sudra*, and feel that it would be the greatest crime to call them *Sudras* even . . . .

The Honourable Shri Jagjivan Ram (Minister of Labour): Does it not cut at the root of Hindu religon ?

Seth Govind Das : Divorce exists amongst the 90 per cent, of the *Sudras*. In this case too, it so looks to me that if we pass this legislation in utter disregard of their customs and usages, then 90 per cent, of the people ....

Shri Raj Bahadur (United State of Matsya): Sir, may I request the honourable member to use any Hindi equivalent for the word "*Talaq*" (divorce) ?

Seth Govind Das : I feel that the honourable member does not understand the implications of the Hindi language. All those words which have been included in Hindi belong to Hindi alone—may it be '*talaq*' or anything else. If he still wants to know the Hindi equivalent of '*talaq*', I would tell him that this can be substituted by the word "Vivah Vichhed" (विवाह-विच्छेद) (dissolution of the conjugal rights).

I was just telling you that if this legislation is passed after brushing aside the customs and usages prevalent amongst those 90 per cent. of the people, then it would mean that they would not be able to divorce in their traditional manner and they would thus be confronted with many difficulties. Therefore, it is bound to give rise to a very great difficulty inasmuch as it runs counter to the wishes expressed by the honourable Dr. Ambedkar that everybody should be given the full liberty to marry and divorce. I am in favour of such sort of liberty being completely given to all the men and women.

The Honourable Dr. Ambedkar also pointed out that 10 per cent. of the people amongst us who are called Caste Hindus Viz., *Brahmana, Kshatriyas,* or *Vaishyas* want to thrust some thing upon those who form the 90 per cent. It so looks to me that those of us—who are ten per cent, in number—who form the intelligentsia want to load a few things on those comprising of 90 per cent. It is not the *Brahmana, Kshatriyas* and *Vaishyas* who put the burden, but this is done by those people who have managed to come to this Assembly in some way or the other. I would also tell my sisters that I am not prepared to accept this view that my sister members, Shrimatis G. Durgabai and

Renuka Ray and other lady members who are sitting in this House represent the women; or those sisters who sit in the visitor's galleries represent them. I admit that those who are not present here, those who do not come in the visitor's galleries can represent this country better than those who are sitting here. We shall have to admit that the allegation which is being made today that some high-caste people want to thrust their opinion upon the low-castes is not correct. But in reality the position is that the ten per cent, educated people want to thrust their opinion upon the remaining 90 per cent. Without knowing anything as to what is the will of the people in this country, they should not thrust their opinion upon them. I do not want that any legislation should be passed in this House which is against the wishes of the people.

Shrimati Renuka Ray : Do 90 per cent, of the people know that you are drawing up a constitution ?

Seth Govind Dast : We know that the people are with us. To talk as if this is your own concern is not correct. We have come with a mandate from the people in that respect.

The other thing which has been mentioned here is in regard to 'Succession'. It has been stated that we are required to carry out drastic reforms in the law relating to Succession. I agree that there is a great scope of reforms being made in the Succession System. And I also admit that it would amount to the greatest possible injustice being done to the females if they are not conferred upon the right of succession and thus precluded from inheriting the property. The women should be given the right of succession. Now the question arises as to what extent should such right of succession be vested in the females. The Honourable Dr. Ambedkar has in support of this quoted from the *Smritis* of Manu and Yagnavalkya and pointed out that these *Smritis* also confer upon the females the right to inherit property to the extent of one fourth. I would like to say that in my opinion some improvement should necessarily be made in the domain of succession even if these are the views held by Manu and Yagnavalkya. There was a time when the matriarchal system existed in this country or even in the world. But in the present day society, the matriarchal system has been replaced by the partriarchal. So long as the matriarchal system existed in this country as well as in the world and the husband used to come and stay at the bride's house after marriage, it was quite appropriate that the daughter should have

a share in her father's property. But according to my viewpoint now when the patriarchal system is in vogue and the girl leaves her father's house for that of her father-in-law; it would not be proper to give her any share out of the father's property. In my opinion the daughter-in-law should be given the right to share her father-in-law's property. As soon as the marriage is consummated, the daughter-in-law should be given the share equal to that of the son. Today the son enjoys the full right, and if any woman becomes widow, she is entitled to the right of maintenance only *viz.*, rood and clothing. I am totally against it. Therefore, I would urge that the women should undoubtedly be given the right to share in the property, but that should be restricted to her father-in-law's property only and not that belonging to her father.

Shri Mohan Lal Gautam (U. P. : General): If there is no father-in-law ?

Seth Govind Das : Then in the husband's house.

Shri Mohan Lal Gautam : If there is no husband.

Seth Govind Das : Then in the son's house.

Shri Mohan Lal Gautam : And if there is no son ?

Mr. Tajamul Husain : And if she is not married then what would she do ?

Seth Govind Das : That is a separate thing. They do get from some source or the other. In the example which has been cited here that when there are twelve sons and thirteenth a daughter, and the twelve sons have got the right to distribute their father's property, then why should not the thirteenth daughter be given the same right ? I would say that all the twelve sons live in their father's house. The distribution which the twelve sons make is made at the same place.

Shri Krishna Chandra Sharma (U. P.: General): If the daughter also wants to live in the father's house ?

Seth Govind Das : Since the daughter has got to adopt another house, this cannot be made applicable in her case. Another thing that has been added in respect of succession to property is that the right of succession will not be governed in accordance with the contents of the will. In cases, where the wills are not executed, disputes will arise. Not only this, disputes will arise even otherwise. The Honourable Dr. Ambedkar who is a renowned lawyer is aware of the fact as to what percentage of the will executed hithertofore were brought up before the Courts and on how many wills were the suits instituted ?

I am afraid that as soon as the will comes in, neither the sons nor the daughters would be able to share the property under the provision of this law which seeks to confer upon them the right of succession. All that property will be grabbed by the lawyers.

Then again another thing will happen. The Honourable Dr. Ambedkar wants that the daughters should also be given the right of succession to the property. Then I would submit that in our society which is undivided at present, when the fathers execute the will, they will not bequeath anything to their daughters, but would give to the sons alone, and thus this would defeat the very object with which you want to confer the right of succession on the women. In regard to succession, I would like to say that just as Dr. Ambedkar has himself admitted, it is a very intricate subject. It so looks to us—we might or might not be Socialists or Communists—that on the one hand the industrialists have raised the voice that the industries are not being developed in this country and on the other hand the question of succession has been mooted out. Therefore, the best thing would be that you should abolish the system of private property. If after the liquidation of this private ownership, a new society is evolved—I do not say that the structure of that society should be based on the principles of Socialism and Communism—but I have since formed this opinion that a new class of society should be built after the liquidation of the individual holdings. If our capitalists see to this they will no doubt find that this wealth is no longer a source of solace to them. I belong to that very class which can be termed as capitalist. But we see who is deriving the real pleasure out of this hoarded wealth ? I have not come across any such capitalist who can fill his belly by eating and digesting 10 or 20 seers, while a poor man can be satiated by taking half a seer or three quarter of a seer. I have also not seen any such capitalist who puts on about 100, 200 or 400 yards of cloth at a time, while a poor man can cover his body with only five or six yards.

The Honourable Maulana Abdul Kalam Azad (Minister of Education): Some people do war !

Seth Govind Das : I am accustomed to live in palaces, and I would like to say that if any capitalist is made to sleep in one of the large halls of his palace, he cannot enjoy the sleep. For sleeping purpose, only one room measuring about 12 or 14 feet is required. Now-a-days wealth has become an affliction—for the wealthy too. Those

people who do not get this, they desire to acquire it and those who have got it suffer great hardships and on account of that they cannot live peacefully.

The Honourabel Maulana Abdul Kalam Azad : And they do not want us to give up also !

Seth Govind Das : They do not want to give up because the man who discards that wealth is looked upon with great esteem in the society.

Shri Sita Ram S. Jajoo (Madhya Bharat) : The man who renounces this or gives it in charity is also equally respected.

Seth Govind Das : It is alleged by our Socialists and Communists that all the capitalists are robbers, dacoits and wayfarers. Some of the Socialists, Communists might differ from this. I cannot ascribe this to all of them. But many of them would renounce their Socialistic and Communistic creed if they can acquire this wealth. The hoarders of wealth are even today held in esteem by the society. We should try to overhaul the conceptions and values of the society in such a manner so that the capitalists may in reality be treated as dacoits and robbers; and then only I would say that no capitalist would like to wear this collar around his neck. Therefore, with a view to tackle this knotty problem of succession, I would urge that our Honourable Law Minister Dr. Ambedkar may bring forth such a measure which should seek to abolish the system of private ownership and thus ameliorate the condition of those people who have fallen a victim to this.

Shrimati G. Durgabai (Madras : General): Will you not oppose that?

Seth Govind Das: In my opinion these are the only two points in this Bill which are subject to good deal of controversy. I am also of the opinion that keeping in view the trend of the time and without indulging into any sort of controversy, we postpone the enactment of this Bill till the formation of the new Assembly and in the meantime invite the opinion of the people in this connection; and after ascertaining the wishes of the people, we should bring forth this measure as soon as the fresh elections are held. We should not present this measure in the form of a Hindu Code but the proper course would be to pass it in the same manner in which we have passed our constitution which provides for the rights of every citizen in the country.

Dr. Mono Mohan Das (West Bengal; General): On a point of order, Sir, is there no time limit for allowing this kind of discussion ?

Mr. Deputy Speaker : There is no time limit.

Seth Govind Das : With these words I would conclude, and say that I feel it absolutely necessary that reforms should be made in our social laws. I also admit this that those people who oppose this Bill in the same manner in which they behaved at the time of the enactment of laws relating to the abolition of Sati, widow-marriage and prevention of child marriges are not following the right course of action. But along with this I also admit that this Bill has not been moved at the opportune time and we should postpone its consideration at the moment. We should present it only after ascertaining the public opinion. With these words, neither I support this, nor oppose this.

* **Shrimati Sucheta Kripalani** (U. P.: General): Sir, ever since we had a sovereign legislature, no piece of legislation has given rise to greater excitement and controversy than this Hindu Code Bill. If all this controversy had been based on reason and on the merits of the changes proposed in Hindu Law it would have been to the good but much of the controversy is clouded by irrelevent issues. The argument of Religion in Danger has inspired much of the propaganda against the Code. It is urged that it will shake the foundation of the Hindu religion. Those who put forward such argument do a great injustice to their own religion.

Hindu religion is primarily concerned with the spiritual emancipation of the individual, his progress towards self-realisation. The self-fulfilment of an individual stands in need of certain moral and spiritual principles as truth, justice, non-violence, etc. These are embodied in our scriptures. These are unchangeable and fundamental. The social arrangements, institutions, conversations and customs that have evolved through the ages are not religion. The Hindu Code does not seek to disturb the Hindu religion but to amend and modify the Hindu civil law. The law has changed from time to time. It is different from religion and has never been unchangeable and static. The authors of the *Dharma Shastras* changed the law from time to time according to the consciousness of the community at the time. The right to make changes was well recognised by the *Dharma Shastra.* The Hindu law became rigid and static only after the advent of the British.

It has been the boast of Hinduism that while the fundamentals have remained unchanged, the Hindu social institutions have changed to suit changing circumstances. Continuous adaptability has been the strength and essence of Hinduism. Unless Hindu society is to remain

*C.A. (Leg.) D., Vol. II, Part II, 24th February 1949, pp. 866-924.

static and dead the law must change to fit with the changing circumstances. We also know that the *Smrities* have not remained unchanged. The *smrities* did include other branches of law besides those of succession and marriage. These have been dealt with by the Indian legislature and some of them have been superseded. Hindu religion did not flounder. Hindu religion has survived that shock. If Hindu religion could survive the shock of these changes I am sure Hindu society and religion can survive the shock of a little more change.

We have also brought in social legislation of great importance. We have abolished the *Sati*: we have abolished child marriage : we have also abolished to a great extent untouchability. Hindu religion is a very catholic and liberal religion. So the argument of religion in danger does not behave us. Within the fold of this liberal and catholic religion people of various views, customs and manners have found shelter and lived. Today what has happened ? Why have we lost our faith in our own religion that we are raising the cry of religion in danger ? It does not mean that I want to say that all those who oppose us are orthodox and are reactionaries. I only want to point out that in forcing your point of view, you are only doing injustice to your religion when you put forward this argument.

Another argument is this that this Bill should not have been taken up for consideration now and that we have not given the country sufficient opportunity to get acquainted with the provisions of the Bill. As far as I know this Bill has been before the House and before the country for about the last ten years. Some of the measures embodied in the Bill as Succession Bill and Marriage Bill, I think, were introduced in the House in 1943. The Hindu Law Committee was appointed in 1944. Its Report was published, I think, in 1945 or 1946 and the draft Bill has been translated into thirteen Indian languages. Thousands of copies of this draft Bill have been circulated. Even after this if we do not know the provisions of the Hindu Code Bill, then, it is our fault and not the fault of the Government. Besides that the Bill won't be passed in a day here. We will take a lot of time to consider it. It will take a good deal of time when we consider it in detail. At that time we will have enough opportunity to go to the public, to acquaint them with the provisions of the Bill and also to ascertain their opinion. There is a whispering propoganda, a very strange propoganda, that this Bill should be postponed till after the next general election. Why should it be postponed ? Because this may adversely

affect our party's popularity ? Is it befitting or worthy of the Congress to put forward such arguments ? Have we ever considered our popularity before our duty ? If we think that a Bill is just, if we consider that a Bill is for the good of the people then it is our duty to go ahead with it. To shelve a Bill just in order to catch votes for the next election is not right. I think it is not even honest. For us the good of the people has always been the supreme consideration. If we don't take this point of view, if we don't keep this attitude before us, we will never be able to sponsor any radical change. Whatever be the field of our life when a radical change is sought to be made, we are bound to come against some vested interests and some established custom. There is always bound to be a cry against such changes. If we give up reform on that score then we shall never change anything.

I would like to say this. Much has been said about the volume of opinion against the Hindu Code Bill. I would like to say with all humility that there is also a very good group—an intelligent, thoughtful group—supporting the measure too. And that intelligent, thoughtful group does not consist of women alone. We have a lot of brothers with us in this measure. We have also seen in history in other countries whenever a radical change was introduced, whenever any reform was sought to be brought into being, it was a small conscious minority that forms up the cause, that educated the public, that did propioganda and after some time public opinion veered round it. So I am sure though it may be that there is a volume of opinion against the Hindu Code, if what we are trying to do is just and right, I am more than sure that public opinion will come with us. Not only will it come with us but it will bless us after a time for the good (*An Honourable Member:* "It is already with us") measure that we have passed. They say, they have got the majority with them. So this is my answer.

In the heat and controversy many times we forget that the Bill does not consist of merely the Succession and the Marriage provisions. We have tried to make a uniform and entire system of law. In this entire system of law or Code we have tried to put right a lot of discrepancies, inequities, and injustices. For instance this morning Dr. Ambedkar in his learned speech told us how the provisions regarding guardianship, maintenance, adoption etc. are going to be beneficial to the society. Those who are totally opposed to the Bill have been forgetting the good side of the Bill, the non-controversial side, and have concentrated all their attack on such the entire Bill.

Let us come to the question of Succession itself which is greatly opposed by large sections of the people.

Mr. Tajamul Hussain : It is opposed by vested interests only.

Shrimati Sucheta Kripalani: It is opposed by large sections. They had levelled two points—against the breakage of the joint family and the grant of absolute rights to women. I will take the second point first. We are seeking to have a society where men and women should be equal, where people of all castes will be equal. We are trying to bring about a perfect democracy of which we have dreamed all these years. We are pledged to give women equal status in society. We are pledged to do away with all sex discrimination and this peldge does not start from the time when we bring into effect the New Constitution. I would like to remind you that in the Karachi resolution these peldges are embodied. After that when we accepted office, then also we again reiterated that there shall be no discrimination on the basis of sex. If men and women are to work equally, if they are to function as equal citizens of the state, if they are to fulfil their obligations towards the state, how can we have such discriminatory rules in the matter of property rights of women ? Unless woman gets her full share of property you cannot expect her to fulfil her obligations to the state. Of course whenever we make any changes, established custom and established rules are disturbed. It causes a certain amount of dislocation and inconvenience, but we have to tolerate them and take them as inevitable. We must not try to enlarge the importance of the inconvenience that is caused to us. Dr. Ambedkar and others have told us that the *Smritis* recognize the right of property of women. What law gave us practice denied us. In practice the right was abrogated. What we are trying to do today is only this.—We are not going against the fundamentals of Hindu religion or Hindu custom or Hindu law; what was granted to us by Hindu law but which was arbitrarily denied to us, we are now trying to take back—or rather you are giving it to us, this which has been denied to us by society all these years. It is merely justice done—long deferred justice.

If you come to modern times, by the Act of 1937 you have given property right to the wife, to the daughter-in-law, to the grandson's wife and so on and so forth. The only person who is left out is the poor daughter. It is but in the fitness of things that now it should be included here. Therefore I do not see what is there to argue much about it. If we have given to other women tills right, if women can

inherit from the husband's side let her inherit from the father's side which is very natural and right.

The Honourable Shri Jagjivan Ram : They want her to develop to the other stages.

Shrimati Sucheta Kripalani : In regard to joint family there is a very great feeling about it. I do not know why there is such a feeling. Most of the people I come across are anxious to get out of the joint family. The sons do not like to stay with the father. I see most of the families distributed all over the country. So joint family is a very rapidly crumbling institution according to me. Even the legal position of the joint family is very faulty as Dr. Ambedkar has pointed out to us in the monring. Even under Mitakshara system a member of the joint family merely by expression of his will can bring about a partition.

I would therefore like to ask you where is the joint family about which you are crying so loudly ?

Much was said about the protection that is given to the unportected women in the joint family. I know in the past in the joint family unprotected women did get protection. Even now some of them do get protection but at the same time we know hundreds of women who, failing to get any shelter in the joint family, having no economic resources of their own, are hounded to a life of degradation and shame. Many of us women, who are doing social work, come across innumerable such cases. Therefore, not only is it right, not only is it just to give woman her portion but it is absolutely essential to give her the share if you want to safeguard the Hindu society about which you speak so loudly.

The Honourable Shri Jagjivan Ram : And something more.

Shrimati Sucheta Kripalani : So much the better. Give us a little more. You have denied us in the past, make it up now.

As regards marriage, the Bill merely seeks to introduce uniformity of practice to avoid confusion and uncertainty. This may entail a little difficulty to those classes which are governed by the customary law but the proposed sacramental and civil marriages are such that it can be put into practice by the poorest and the most backward classes. So I do not think it will create any great difficulty. There is some objection to the registration of sacramental marriages. I think it is purely sentimental because registration is only permissive. If you do not want to avail of the registration you are free not to avail of it.

An Honourable Member : It is compulsory.

The Honourable Dr. B. R. Ambedkar : No compulsion.

Mr. Tajamul Hussain : No compulsion, either would do.

Shrimati Sucheta Kripalani : If I am wrong, Dr. Ambedkar will correct me. It has been put there as a safeguard; that is all.

We come to the question of inter-caste and *sagothra* marriages. I was hearing my friend who preceded me. I do not know how we can wax eloquent over the objection to *sagothra* and inter-caste marriages because I find a very large number of such marriages taking place in the society. If we did not have such marriages it was all right, but when a very large number of such marriages are taking place, either we compel them to have irregular marriage or we drive them out of the Hindu fold or we make them go somewhere or they have to go to the civil registration office and get it done. When it is there, why not accept the fact ? When it is a practice why not recognise it and give it legality ? Therefore, it is but right at this stage, when Indian society has changed so considerably to allow inter-caste and *sagothra* marriages within the Hindu fold.

About monogamy, here also I feel that the society has on the whole accepted monogamy. Polygamy is looked down upon; polygamy finds no favour in our society, though cases do occur. Again, we recognise the current practice amongst an overwhelming majority of Hindus and we legalize it. Moreover as we are trying to bring about a society where men and women are equal, we cannot afford to have a double set of morality for men and women and I should think the men should be happy to have this introduced because by the provision of monogamy we are levelling up the standard of men's morality to that of women. I should think that the men should be thankful to us.

An Honourable Member : Very thankful. We can get easy divorces and marry again.

Shrimati Sucheta Kripalani : As for divorce, though we do not deny the sentiments of the orthodox, men and women, analysing it, we find, that divorce did exist in our ancient scriptures. The grounds of divorce that we have allowed are extremely reasonable and just. We have not allowed any divorce on frivolous grounds as it has been in some parts of the Western world. Care has also been taken to formulate such a procedure that divorce would be resorted to only under very grave circumstances. If we see the records of Baroda, Travancore, Cochin and Malabar where divorce is allowed, very few

people have availed themselves of the law. Only under exceptional circumstances it comes to help the people to get of a very difficult situation. Hindu social tradition is such that we will not on flimsy grounds rush to the court and break up a marriage. The people who fear that the grant of the right of divorce may amount to disruption of the family life of the Hindus are absolutely injustified.

Then I take Dr. Ambedkar's argument of the morning that divorce prevails among 90 per cent. of the Hindus, so why not extend it to the other 10 per cent. It will be very right and just when we see that these 10 per cent. divorce cases are occurring. If there had been no divorce cases then I would have understood it, but we see that whenever our men and women want a divorce, they leave the Hindu fold and become Muslims or Christians and by doing so they insult those religions of which they make a mere utility. Therefore, we should recognise the existing circumstances and allow divorces.

Sir, I have nothing more to say except that I want to tell my brothers here that we women even when we pressed for our rights have never forgotten the greater good, the larger good. We have been very conservative in this matter. You know even for our political rights we have never encouraged things which we have considered wrong. Even when the British were there, we have always stood for joint electorates. Even in the new Constitution we have never pressed for separate rights for overselves. We would have pressed for these if we did not think that they go against the benefit of the entire society. If Hindu women benefit, I am sure the Hindu society stands to benefit. This is for the larger good; that is why we are pressing this point.

Here, I would also like to say that our men on the whole been very co-operative and helpful to us. They have not stood against our progress. It may be that this is due to the benevolent influence of Mahatma Gandhi. You all know that Gandhiji was one of the greatest supporters of women's rights. The tradition that he has established has been followed by our men; because of Gandhiji's influence, because of the sympathetic attitude of our leaders, we have never had to fight for the political rights as women of other countries had to fight. Therefore, I am more than sure that now we will follow the good traditions, we will keep up the spirit of co-operation that we have had all these years and all my brother Members will support this Bill and consider this Bill not as a measure of right for the women, not as a measure of justice that you are giving to the woman, but as justice

done to the society. This is a measure by which we are trying to make Hindu society healthy and wholesome. The Hindu society is full of defects. We are now independent. If in the world we have to take our status, we have to set our house right; unless we do it we cannot take our position in society. Therefore, let us get together and remedy the defects that are in the house. I only appeal to you and I am sure we will have the support of all of you for this good measure.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Friday the 25th February, 1949.

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* HINDU CODE—*contd.*

Mr. Deputy Speaker : The House will now proceed with the further consideration of the following motion moved by the Honourable Dr. B. R. Ambedkar on the 31st August 1948 :

> That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration.

Pandit Thakur Das Bhargava.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I have moved amendments and I think, it will be proper for me to advance arguments and for others to speak. Instead of that if I have to listen to them now and then speak, where would be the scope for them to reply ?

Mr. Deputy Speaker : I think the honourable member who has moved an amendment to the motion will be in a better position if he speaks later because as he knows he won't have an opportunity to reply.

Mr. Naziruddin Ahmad : I do not wish to reply.

Mr. Deputy Speaker : In that view it will be right that the honourable Member should hear certain speeches for and against his motion so that he may be able to reply and he may speak once for all. I have called Pandit Thakur Das Bhargava (*Interruption*). The duty of regulating the order of speakers is with the Chair. I feel it right to call upon Pandit Thakur Das Bhargava.

* **Pandit Thakur Das Bhargava** (East Punjab : General): *(English translation of the Hindi speeches)* Mr. Deputy Speaker, Sir, the Hindu Code Bill that has throughout India . . . .

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*C.A. (Leg.) D., Vol. II, Part II, 25th February 1949. pp. 877-78.

*C.A. (Leg.) D., Vol. II, Part II, 25th February 1949, pp. 895-936.

Mr. Deputy Speaker: In English please.

Pandit Thakur Das Bhargava : As this matter is of vital importance so for this very reason I wish to speak in Hindi.

Dr. Mono Mohan Das (West Bengal: General) : We can understand the Hindustani spoken by the honourable the Minister of Education. It is entirely different from the Hindi or Hindustani spoken **by** Seth Govind Das or Pt. Thakur Das Bhargava. As beginners we do not know which is Hindustani.

Mr. Deputy Speaker : There is no set standard which is copied here. Whatever is spoken is Hindustani.

Pandit Thakur Das Bhargava : Before I begin my speech, (*Honourable members*): "English please") as a number of honourable members desire that I should speak in English I have not the least hesitation in paying deference to their wishes. But all the honourable members know that it is easier to express oneself in his own mother tongue rather than in English. So, if they allow me I wish to speak in Hindi. But if they would insist on my speaking in English then I would not have the least objection in commencing my speech in English. (*Honourable members:* "Hindi, Hindi"). As I think that a majority of the honourable members do not insist upon my speaking in English so I like to speak in Hindi.

Shrimati G. Durgabai (Madras: General) : Kindly speak in simple Hindi so that we also may be able to understand.

Pandit Thakur Das Bhargava : I will try to speak in simplest Hindi. Today when I have stood up to deliver a speech before the House about the Hindu Code Bill a number of conflicting thoughts are clashing with one another in my heart. At the very outset I beg to submit that I am not one of those people who declare this Hindu Code Bill to be the death knell of the Hindu culture, and Hindu Civilization. I wish that the Hindu culture, the Hindu Society and the Hindu Civilization may survive till eternity, till the end of this world. I am, in no way, an opponent to this. I am not at all afraid that this Bill or any another Bill would in the least be able to put the Hindu Culture or Civilization to harm. I wish that those evils that have crept in the Hindu Society since long, and about which Dr. Ambedkar made an appeal before the House in the concluding parts of his speech, may be eradicated; and the appeal may be considered over very thoughtfully with a cool heart. But in fact if the Hindu Society is to be preserved then there is no doubt that if

necessity would be felt for repairing the society then repairs will have to be done. I strongly oppose those persons who hold that this Bill would put the Hindu Culture to an end. I am not prepared to acknowledge even for one moment the fact that this Assembly or the Honourable members of this house, who have the same ability as the *Smritikars* of the old, do not have the right of making any changes in our Shastras or Laws. I hold that the members of each and every community have got the fullest rights to frame laws according to the needs of the time. Today if some one makes an appeal that this being an old custom so we must act accordingly; then about such an allegation I would submit that there is not a single custom that India has not experimented with. There are certain places in India where the system of inheritance is quite different from the other parts of India. Do we not know that among the Khasi tribes and in some parts of Southern Punjab the entire institution of inheritance depends upon the fact that the entire property devolves upon the daughters instead of sons. There are certain parts in India where instead of the girl going to her father-in-law's place the husband of the girl is imported into the wife's family.. India is such a country where every type of custom and law has been in vogue. Is there any such social system that we have not tried. Only yesterday Dr. Ambedkar told that in some *Smrities* it is mentioned that daughters should be declared similar heirs along with sons. So this provision was present since long. Apart from this I do not know of any other law that can be called a new one. Divorce is customary in many places even today. On going through the old *Smrities* it is found that divorce is mentioned there also. I am not prepared to accept that we must revert to those old ideals simply because for the reason that they are mentioned in the old *Smrities.* If we think that those ideals do not suit our present day society then why should those ideals be kept up. I know that in India there was a time when even the institution of marriage itself was not in vogue in India, and the people did not know anything about marriages. In olden days the system of *Niyog* continued for a long time in India. The Hindu Law mentions 8 kinds of marriages. Some of those kinds of marriages cannot even be called marriages. Can anyone assert that those ideals should be re-introduced in the present times. I do not think there is any. So I do not want to consider the question that is before us today from this view point as to what was in vogue in the olden days, how our ancestors used

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to regulate the society by framing laws of their own. The question before me is that in the present times what things we require after fully taking into consideration our needs, our legal conceptions and our necessities. This Code has created throughout the whole country a great deal of unpleasantness, restlessness and uneasiness. Some women declare that they would have rights equal to those of men. This Code favours the women. Some declare that women have no rights. Very humbly I beg to submit to this House, that till the time the Bill is under consideration here, we must never pay any attention to the various slogans or any such things like the allegations that this Bill is favourable to women or it is favourable to men. With a cool heart we must think over whether this Bill is appropriate or not. Which man can say that he has not been born of a woman, and which woman can say that she is not the daughter of a man. So in a matter like this will we not treat our sisters, our daughters, and our mothers with kindness. Do our mothers, sisters and daughters demand that they will not behave properly with their husbands, their brothers and sons. So it is not necessary to introduce any bitter controversy in this matter. I know that this is a very delicate problem. We ought to consider it in the proper manner and with a cool head.

Before I discuss this point any further, I wish to submit a few things about a question so that at least the honourable, members of this House and my honourable sisters in particular may not think that I oppose or support this Bill with some set ideas. At the very outset I wish to submit that I belong to that school of thought who believes that till the women are not given their proper rights in both the immovable and movable properties their personality will not attain full development. I very strongly oppose the economic dependence of women. I do not like that *sloka* of Sitaji wherein she has said:

मितं ददाति हि पिता मितं भ्राता मितं सुतः

अमितस्यतु दातारं भर्तारन् का न पुजयेत ॥

I hold Ramayan in a very high esteem but I am not, for one moment, prepared to accept the principle that the women should always be kept dependent. I am not, for one moment, prepared to accept the verdict of a few of the *Smrities* that a woman till she is not married must remain under the control of her father, and after marriage under the control of her husband, and if she becomes a widow then under the control of her son. I oppose this verdict of the *Smrities* not for the reason that it is painful to women. I know that till the women

of India will not attain a strong personality, till the women will not improve their condition economically and till they will not have an all round development our genealogy will not, improve. Like men the women also should be given all kinds of opportunities for their development. I think that it is not at all justifiable to look at this question from a narrow angle of vision. We have to decide this question very prudently and keeping in view the welfare and advancement of our entire nation and country.

Since thousands of years we have been believing in certain prevailing customs and rites and have also been preserving them. But along with this we have also to decide our line of action as to how we should act upon the slogans that are being raised in the present day world like "women must have rights equal to men" We may not accept this principle *in toto* but we at least stand committed to afford them scope and facilities equal to men for their development. We will have to keep this principle in view. Therefore, I wish to submit without any reserve that women must get their lawful rights in the movable and immovable properties. I am strongly in support of this. I also congratulate Dr. Ambedkar for his accepting in this Bill the principle of the Abolition of Caste in marriages and adoption. I do not possess sufficient eloquence to let you know how important I consider this question to be. I look upon this question in this light that it is question of nation-building. It is a question of our life and death. This pertains to basic principles. If any thing has ruined India, marred her progress and became an instrument in creating Pakistan, it is this caste system. If there is anything that has entered our society and is eating into the vital: that has made Brahmins enemy of others, the Jats enemies of non-Jats and the Kshattriyas the enemy of all other communities, it is this caste system only. I do not know how can we refuse to follow the path of formation of a class-less society, the path pointed out to this country by Mahatma Gandhi, the Father of the Nation. The two things, that are instrumental in uniting the people of this country, are inter-dining and inter-marriages. As far as the question of inter-marriages is concerned, till this question is not resolved the problem of nation building in India cannot be solved. Therefore, as far as this question is concerned, I am strongly in its favour.

As far as the question of monogamy goes there may not be a single member against it. As far as the consequences of monogamy are concerned I know that its passing would badly affect the area I come

from. Because even today, according to the circumstances, it generally happens that when some one dies-leaving his widow, the widow is re-married to the younger brother. I know that in the coming times we should not continue these out of date-customs. I think that if the defects of this out of date system would be told and explained to those people whom it will affect then they would also readily agree to renounce it.

As regards the question of monogamy and the people about whom I am talking I wish to submit that these people according to their needs and intelligence thought out and adopted this principle in that time when widow remarriage was not in vogue in India. Without any reservation, I wish to submit that as far as the questions of monogamy, abolition of caste system and giving of the fullest rights to women, are concerned I am fully in support of them.

As regards the question of divorce I know that the system of divorce exists in a major portion of India. These days to some people this system of divorce appears to be bad. In fact in a country like ours where according to our customs the women used to commit *Sati,* the opposition of the system of divorce is not a thing to be wondered at. According to our beliefs marriage constitutes an indissoluble relationship, and from this point of view the right of divorce should not be given. But I like to submit that the system of divorce has always been in our country and is still present to this day. If the people wish to walk with their eyes closed, if they do not want to see as to what is happening in the world around them., then it is upto them to do so. Dr. Ambedkar told us that this system is found in 90 per cent. of the people of this country. I beg to submit that these figures are under-estimated rather than over-estimated. As regards the question of divorce and as far as it is in practice in India I am entirely in support of it, not for the reason that it is in vogue in the present day society but for the fact that it is one of our own customs. Therefore I am in favour of divorce.

The question arises that in this Hindu Code Bill, as it has emerged from the Select Committee the main defect is mat it does not go far enough. In fact the customs prevalent in our country and the reforms suggested by the Select Committee fall far too short. The people in Punjab are not so backward. As regards social reforms the people of Punjab are far ahead than those of the rest of India. This Code does not go to that extent even. For them this Code is not a kind

of social reform but it draws them back instead. If this Code would be shown to any Hindu or Sikh of the rural areas of Punjab then he would say, "Oh Sir, what are you doing ? You are retrogressing us to a great extent. We are far ahead of all this. You want to take us still backward." The people of Punjab will not be benefited by this Code. The present Code has emerged from the Select Committee in such a form that the needs of the people of Punjab have lagged far behind; the needs have not only been left behind but certain things in this Bill compel us that we will have to throw this Bill out if it remained in the present form. If we want to preserve our institutions then they cannot be preserved in the present form of the Bill, and thus this Bill becomes annoying.

Shri Mohan Lal Gautam (U. P. : General): Quote any example.

Pandit Thakur Das Bhargava : I just give an example. After this introduction, with your permission Sir, I beg to submit the objections that I have to raise against this Bill and say to what extent I have to support this Bill. There are many such provisions in this Bill about which no one may have any objection. There would be a very few persons who would say that they are against all the provisions of the Bill. But Sir, if you were to go through the Bill you would find that there are notes of dissent from 11 out of the 17 members of the Select Committee, and who are they ? Shrimati Ammu Swaminadhan and Shrimati Renuka Ray are among them. Notes of dissent from both of them are there.

Shrimati Renuka Ray (West Bengal: General): These notes are not on fundamental principles.

Pandit Thakur Das Bhargava : I am coming to that. To tell the truth these 11 members who have written notes of dissent, themselves oppose this Bill as it has emerged from the Select Committee. I was submitting as to who have written notes of dissent. One of the notes of dissent is from Bakshi Tek Chand who has worked for social uplift throughout his life and is prepared to go to any extent for social reforms. When he also writes a note of dissent then it is for us to think as to where are we going ? If these notes of dissent he carefully read then it would become clear that out of 17 members at least 11 strongly oppose this Bill as it has emerged from the Select Committee, After this introduction I beg to state why I am prepared to move such motions, which are generally considered dilatory against this Bill as it has emerged from the Select Committee.

Mr. Tajamul Hussain (Bihar : Muslim): Sir, I beg to raise a point of information. The honourable member has stated that 11 out of 17 members of the Select Committee have written note of dissent. If they are opposed to this Bill, then I would like to enquire from the honourable members how this Bill came to be recommended by the Select Committee so that we may pass it.

Pandit Thakur Das Bhargava : Mr. Deputy Speaker, Sir, in my opinion this question is neither a point for information nor a point of order even. You may go through this Bill yourself Sir. Mr. Bharathi has also written a note of dissent.

Shri L, Krishnaswami Bharathi : (Madras: General): Mine **is** little ahead of the Bill. I want to enlarge the scope of the Bill. That is my dissenting minute.

Mr. Deputy Speaker : Should honourable members go on explaining every remark and every sentence ? It is not necessary.

Shri L. Krishnaswami Bharathi : No, Sir, I was . . . .

Mr. Deputy Speaker : The honourable member's note of dissent is in print. He will have his turn if he wants to offer any explanation. It is no good going on interrupting a speaker and other honourable members also by simultaneously standing up.

Shri L. Krishnaswami Bharathi : May I say, Sir . . . .

Mr. Deputy Speaker : I have heard the honourable member sufficiently.

Shri L. Krishnaswami Bharathi : On a point of personal explanation, Sir ?

Mr. Deputy Speaker : Order, order.

Pandit Thakur Das Bhargava : Sir, I would not give Mr. Bharathi the trouble of explaining his viewpoint before the House. I myself present his view point. The note of Mr. Bharathi is that he is no way against the fundamental principles of this Bill. He wants that as a logical consequence the women must be given the right that all these women who own limited estates, he wants that they at once be made absolute owners. I am correct, I think.

Shri L. Krishnaswami Bharathi : I am not permitted to reply.

Mr. Deputy Speaker : The honourable member Pandit Bhargava may go on.

Pandit Thakur Das Bhargava : For this very reason Sir, I was submitting that a number of members of the Select Committee have

written notes of dissent on that form of the Bill as has emerged from the Select Committee. With what intension these notes of dissent were written, I will submit later on, but I wish that I may not be interrupted in the course of my speech.

Sir, I was submitting that although this Bill does go to a certain extent and I am prepared to go even beyond that in social reforms yet still I do not find myself in a position to fully support this Bill. And this is quite natural. Even Dr. Ambedkar himself, by whose kindness the Bill has taken this form and who has delivered such a speech of which every Indian and especially every Hindu must feel proud, is not in support of all the provisions of this Bill. Therefore he told that at places the Select Committee has gone out of reason. I do not want to use harsher words. But I say that he also is against this Bill and in this way there are 12 notes in its dissent. So I was submitting that when 12 out of 17 members are against this Bill then in such a condition the House should not feel astonished if I wish to support the amendment moved by Mr. Naziruddin Ahmad. The reason is quite clear. I do not wish that any of you may misunderstand me. There are many such sections of this Bill about which I do not wish that their passing be delayed even by a minute. Had his motion been dilatory I would not have supported him. Many of my motions also were not dilatory. I know that this Bill is not going to be passed in this Assembly *i.e.* in this Session of the Assembly. A special session of the Assembly will have to be called to pass this Bill. The next session will come off after about 6 months. The objection that I am raising can very easily be decided in this period of six months. With your permission Sir, I wish to submit that I do not want that the Bill may not again be sent back to Select Committee : and for such a move my reasons are quite different. Perhaps some of the honourable members might be thinking that I wish this Bill may anyhow come to an end. I do not want to kill this Bill. I wish mat this Bill be passed. I wish that all the good points of this Bill be accepted. So it is necessary to look upon this Bill with a cool heart. It is not necessary to infuse heat. Therefore, I wish that whatever I want to submit, you must hear it with a cool heart and I think that Dr. Ambedkar will not misunderstand it. I wish to submit all this very humbly and not with the spirit of antagonism. But I must have the courage to say what I want to say and I wish that others must interpret it at least fairly if not generously. I submit all this very respectfully and attach

no less importance to this. Now I wish to submit that as each and every honourable member of the house knows that new elections are to be held. All the present members have come here by indirect election. The members that are to come after us will come from direct election and adult sufferage. According to the resolution passed by us in the Constituent Assembly the elections will be held in 1950. Only then I would be prepared to call that, as you yourself Sir, had said, an absolute sovereign body. Yet still on the principle of propriety I beg to submit that instead of us deciding a matter that concerns the daily life of 30 crores of people it would be better that those people, who are to come from direct election and adult sufferage, should decide this issue. I would submit that this will be the proper course. I wish to submit on the principle of propriety. Some people feel that this Assembly can frame the constitution only. This is the same argument that was advanced yesterday that when fragmentation does not take place on dividing a property among twelve sons then there cannot be any if it is further divided so as to include a daughter as well. But I say that "one wrong cannot justify another".

Shri Mohan Lal Gautam has said that this Assembly is not also competent to frame the constitution even. I do not agree with his views but if you do agree then why are you repeating the mistake ? This is quite wrong. If you do not hold this view then it is another thing. In my opinion this constitution framing Assembly is a sovereign body. It is perfectly legal and in the same way this house is fully authorised to pass today any laws that it likes. Yet still the sense of propriety, the sense of proportion, demands of us that we must not make haste in this matter. We have been following these principles since thousands of years and therefore I wish to submit that in the next 6 months the sky will not fall down upon our heads, so that we may pass the Bill immediately with undue haste. Therefore I would very humbly submit that as you Sir, have written in your dissenting note: out of these twelve persons, the twelve signs of the Zodiac—you are one of them; and along with you Babu Ramnarayan Singh has also mentioned on page 11 :

> "The members have been elected indirectly and have no mandate from the electorate. The mass of opinion and the majority is against most of the provisions of the Bill and the Bill seeks to alter the fundamental structure of the Hindu Society."

I very humbly beg to submit that justice demands that the representatives of direct election after being elected to this Assembly

should be given the opportunity of deciding this matter. Our much respected and a true leader of the country Dr. Rajendra Prasad, agreeing with this principle, had also written a letter that this Bill as a whole be presented before the coming representative Assembly.

Mr. Tajamul Husain : What it was that the Governor-General had written ?

Pandit Thakur Das Bhargava : Sir, whatever you say about the Governor-General has been mentioned here. But I very respectfully beg to submit that I highly honour and esteem the opinion of the elders. This matter today concerns me, concerns every woman who lives in any distant village. Everybody will be affected by this and so every one has got a right to express his opinion. Why I do not agree is that yesterday my honourable sister Shrimati Sucheta Kripalani had said that in this manner centuries would pass. This Bill has been on the anvil for the last ten years. It was drafted in 1941. This argument does not appeal me. May I ask how much literacy is there in this country ? May I ask how many women of this country are literate ? I wish to address my honourable sisters here, who are the members of this house and whose opinion I highly esteem; but I would say whether thousands of their sisters who live in villages and towns have the right to express their opinion in this matter. For this reason I would urge my honourable sisters here that they should have patience in this matter and exercise some restraint. If I were to submit that the opinion of those also be included, who have full right to express their opinion, then this may not be considered a crime. Very respectfully I beg to submit that the people living in towns and villages are not at all aware what the Bill is and what its provisions are. Some honourable members say "*Hear*" "*Hear*". Very respectfully I beg to submit that those people who have not studied the provisions of this Bill and a number of members of this House have not at all realized what its importance is.

Shrimati G. Durgabai : When you consider women of this country fit enough to understand the provisions of your other Bills for reform, don't you think they will be able to understand the provisions of this Bill?

Pandit Thakur Das Bhargava : I welcome this interruption, because it gives me an opportunity to explain the real point. Sir, an objection has been raised that once upon a time the Sattee Bill was passed, widow marriage Bill was passed, Sharda Act was passed; and the Bill that is before the House today is also of the same category

which, according to Shrimati Durgabai, is something higher in level from those that can be passed taking into consideration the opinion of the common people.

Mr. Tajamul Husain : May I be allowed to move a point of order ?

Mr. Deputy Speaker : What is the point of order, please ?

Mr. Tajamul Husain : My point of order is this, Sir, that the contempt of the whole House has been committed by my honourable friend in this way; you heard him out and he says that there are members of this House who have not understood the Hindu Code Bill. This amounts to a contempt of this House and I want a ruling on this.

Mr. Deputy Speaker : I do not think that there is anything in this point of order. All that the honourable member means is that the full implications of the Bill may be understood differently by different sections of the people. According to him they have not been understood in the manner in which he would like honourable members to understand it.

Pandit Thakur Das Bhargava : Besides this Sir, I do not claim and I am not at all prepared to say that I have understood the provisions of this Bill any more than the other honourable members of the House About myself I am prepared to say that I have not understood fully all the provisions, all the clauses and all the implications of this Bill and this I can say about all the honourable members and myself in particular. The honourable members here, who are not lawyers, can say that they have fully understood the Bill; but the lawyers present here cannot say with confidence that they have understood all the provisions of the Bill as has emerged from the Select Committee. I am not permitted in this House but, if I be permitted then I like to put two or three questions to Mr. Tajamul Husain and he should give an answer whether he understands or not. It is not at all my intentions to commit contempt of the House. Very respectfully I beg to submit that it is not at all my intention . . .

Mr. Deputy Speaker : Every citizen is presumed to know the Law, every honourable member is presumed to have read this Bill. The honourable member can go on with his speech.

Pandit Thakur Das Bhargava : I was submitting Sir, after this introduction, I was submitting why I am in favour of Mr. Naziruddin Ahmad's amendment. Sir, I submitted some facts for your kind consideration, that this House is not so representative as it is to be tomorrow and this is not to take much time, in a few months the

new house will come into being and therefore it would have been proper to (postpone the discussion on this Bill till the new house comes into being).

A still stronger argument in favour of my submission is that you, Sir, are well aware of the fact that today property includes two different types of thing. One is lands and the other houses. As far as the landed property is concerned this Bill does not affect it. What will be its effect on succession in a country like India which is mainly an agricultural country and where 90 per cent of the people live in villages. After the death of a person his lands will be governed by one law and his house in the village will be governed by another law. What will happen to me ? If I have some property in Delhi then this property will be overned by one law and my landed property in Bahadurgarh will be governed by another law. My house built in my fields at Bahadurgarh will be governed by one law and my house at Delhi by another law. Is this uniformity? If such a thing is being maintained then what the result would be ? The appointment of an heir takes place at Bahadurgarh whom the Hindu Code does not recognise, then that boy, who is the appointed heir, will of course inherit the landed property at Bahadurgarh but on the residential house of the deceased some one else would have a claim. The boy will get the landed property but will have no claim on the house, then after all where the boy will go ? The effect of this Bill would be that it will not apply on landed property. I think that Dr. Ambedkar wishes to pass a Bill whereby economic holdings could be made and the landed property of average man may not be partitioned. But when this Act will come into being and when the abolition of zamindari takes place, I am not aware of this.

Shrimati Renuka Ray : You can introduce such a Bill immediately.

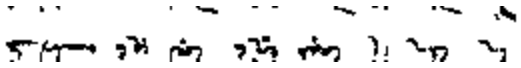
Pandit Thakur Das Bhargava : Respectfully I beg to submit that intentions are not so easily fulfilled in this world as my honourable sister thinks that simply by introducing a Bill this intention will be accomplished. This is a Bill for the benefit of the country, but how many obstacles this Bill is encountering. How much time the Land's Bill, whereby the rights of everybody will be usurped, will take and where will it be passed ? This is under the power of the Provincial Government. I wish that we may make such changes in our constitution whereby, as far as the question of lands is concerned, under

the constitution, this may also be within the powers of the Central Government. If this Bill is passed then I see in it the defect that it does affect the residential property and does not include the landed property. This is a great confusion. A change has now been made in the original Bill that now this Bill will also apply to the lands in the Centrally administered areas, i.e., it will be applicable on both the residential and landed properties of Ajmer Merwara and Delhi. In other provinces this Bill does not apply to lands. In Delhi and Ajmer-Merwara this will apply to both the rural and urban properties. This is a great defect of this Bill and which knock out its bottom.

As yet the people are not aware how this Bill would affect them. For this reason only I had submitted that full publicity has not been given to this Bill. I know that if today people were to know that through this Bill such far reaching and fundamental changes are being made in their law of inheritance, changes which will have affect on each and every family of India, then at one time the people of the whole of India on coming to Delhi would present their applications that this law may not be passed. Many people are not aware of this. The knowledge is shared by the members of this House. Bar associations and a few of those who read newspapers. You can well understand how small the number of such persons is. Such a Bill, which affects the entire Hindu Society, has not been given sufficient circulation and no opinions on this have been taken. A committee was set up, it took evidences at many places and the report of the committee is with me. If you would see as to where the members of this Committee went, what they did and whose evidences they recorded; then you would find that the committee has asked the opinion of some well placed and educated persons only and they have not taken the opinion of a major part of the country. In this there is no question of education. For this Bill every mother and father, who fully realize their responsibilities, can give their opinions. Everybody is affected by this and so every person is competent to give his opinion. Besides this I would submit that nobody has the knowledge of the changes that have been made-by the Select Committee in the original Bill. Only the members of the Assembly have information of these changes, the rest of the people do not know what changes the Select Committee has made. Now the question arises that as the Select Committee has made changes in this Bill so its circulation has become very necessary. Leave aside the old question that no law should make

rapid changes in the customs of the people till the opinion of a majority of those people, who are to be affected by it, be not taken. The Bill that is being introduced today is one wherein the Select Committee has made such changes as are of vital importance and about which everybody must have full information. For this reason only its circulation is all the more necessary.

Before I submit anything about these changes, I wish to draw the attention of the House towards one point. I regret to say that the Law Department itself which is an embodiment of law because its name even is Law Department, these same people do not respect the law. When these people themselves establish such a procedure that they must not have established, then I will have to say—



I do not want to touch the question that has been decided by your predecessor. That question has been decided. That ruling is final for me. I do not question it. I highly honour that ruling although I know that this ruling according to my opinion was not correct, yet I do not want to question it.

Mr. Tajamul Husain : No one can say inside the House that the ruling of the Chair is wrong.

Mr. Deputy Speaker : I am sorry the honourable member has not understood Mr. Bhargava at all. What he says is that he does not agree with the ruling but he cannot question the ruling here. It is open to any member to think for himself and also to say that in his opinion he does not accept it, but he is bound by the ruling. I think there is nothing wrong.

Pandit Thakur Das Bhargava : I am very sorry that whenever my honourable friend Mr. Tajamul Husain raises any point of order it does not survive even for a minute. I wish that he may raise such a point of order which I may also be able to reply. I know that at this time he is enquiring from another honourable member whether this Bill applied to lands or not but he pretends and says that he understands this Code Bill. Then I like to submit that I am perfectly within my rights if I say that on the ruling I hold a different opinion. I wish to submit a few other fundamentals that have not at all been touched by the Honourable the Speaker's ruling. Most humbly I beg to draw the attention of the House particularly towards the fact that this House which is a constitution making House, is a master of her

laws. None of our matters can be referred to any court in the country. If this house forsakes its principles for the sake of passing a certain Act then we commit such a mistake that we cannot be absolved of its responsibilities. I beg to submit that in this redrafted Bill, reported by the Select Committee, the mistakes that we have committed therein are of three types. Firstly when a Bill comes before the House, comes in the possession of the House, and is introduced in the House, then after this except for the House no member of the House, however big he might be, however good he might be, cannot even change a comma therein without the consent of the House. If there be any electrical mistakes then it is another thing; and if that also be a material mistake then it will have to be printed again and re-circulated and after again being introduced in the House can be referred to any committee. Very respectfully I beg to submit Sir, that I am presenting two or three technical points for your kind consideration., About these points I will have to submit very humbly to the other honourable member, but not to Dr. Ambedkar as he is familiar with technical rules and things, and he knows how much injustice can be done by forsaking these technical rules. So I was submitting that by forsaking these technical rules except injustice and unlawful things nothing beneficial can be accomplished. Mr. Oslow has been a very famous speaker of the house of Commons. He had said that no work should be done in contravention of the technical rules. For the protection of minorities, for the protection of the House as a whole, there are technical rules, and these rules are of such a fundamental character that whenever the limits will be transgressed nothing except mistakes can be accomplished. This principle has been laid down in the May's Parliamentary Practice, which is the convention of the mother of Parliaments. The convention is that as soon as Bill is introduced it passes out of the hands of the member introducing it and comes within the power of the House. I am translating the words of May's Parliamentary Practice which I will soon read out to you.

Mr. Deputy Speaker : I do not think anybody in the House doubts that any honourable member even though he may be the mover has got the right to change the Bill when once it has been placed before the House. As I understand it, the Honourable Speaker's ruling is that the very same Bill was considered in the Select Committee. Therefore, there is no good canvassing that position. The Honourable the Law Minister did not say that another Bill was considered in the Select

Committee though the other draft which he placed before the Select Committee was considered along with the original Bill. As any honourable member is entitled to place amendments before the Select Committee instead of sending piecemeal amendments, according to him, he printed all his amendments and placed them before the Committee. That is the ruling of the Honourable the Speaker. Barring that, the honourable member can go on. Nobody doubts the position stated in May's Parliamentary Practice that it is not open to a member even though he may be the mover of the Bill, to change the Bill when the house is seized of it. The Honourable the Speaker has said this has not been done. We are bound by that; otherwise the honourable member may go on.

Pandit Thakur Das Bhargava : I wanted to submit only this much that after hearing your opinion I have become still more staunch on my belief. You have decided that if it is somehow proved that in fact no amendments on this controversy came before the Select Committee then it should be accepted that the redrafted Bill should not have been considered. For this reason I would submit that I have no need to quote the ruling again before you. Sir, I have got a ruling of Hansard Vol. 215 of 1873 wherein at page 302 it has been laid down that if a member gives notice of introducing a Bill and this Bill is printed then that member cannot make any changes in the Bill before the second reading, and if he makes any changes then the Honourable the Speaker gave the ruling that the Bill be withdrawn—the Bill cannot be further discussed.

Mr. Deputy Speaker : The position of law is accepted, there is no need to convass that. I do not think the Honourable the Law Minister denies the postion of law that he is not entitled to changes . . .

The Honourable Dr. B. R. Ambedkar (Minister of Law): No.

Mr. Deputy Speaker : . . . . any comma or semi colon except as accepted by the Select Committee. But it is open to him to place matters before the Select Committee. I think that was the ruling of the Chair. The honourable member may go on.

Pandit Thakur Das Bhargva : Sir, very respectfully I wish to submit that if the other original Bill is placed before the House then I will have no objection. Had this Bill been considered in the House in this manner then nobody would have any objections. After being introduced in this manner the Bill should have been technically considered clause by clause and word by word. If this procedure has

not been adopted and if the Bill was sent to the Select Committee and in the Select Committee it was not considered word by word and clause by clause then I would like to ask if the first Bill was before the honourable member or was it in his pocket or had he come after reading it at his house. I wish to draw your attention Sir, towards Parliamentary Practice. No member of the Select Committee has any claims against this. I have with me strong reasons and I wish to draw your attention Sir, towards them. In the first place perhaps in the majority report it is written:

"We confined our deliberations to this redrafted Bill."

Shri L. Krishnaswami Bharathi : May I interrupt ? This is not correct.

Pandit Thakur Das Bhargava : The original Bill has not been considered clause by clause and word by word in the actual sense of the term. In the popular sense as the Honourable the Speaker said before and in the sense in which Shri Balkrishna Sharma submitted before the House, the Bill was before us, then I have no objection against the Bill. I am prepared to accept that whatever Shri Balkrishna Sharma and the Honourable the Speaker have stated . . . .

(*English translation of Hindi speeches is over*)

Shrimati G. Durgabai : On a point of order. He is questioning the ruling of the Speaker..

Mr. Deputy Speaker : I understand the honourable member, though I do not understand every word that he says, I am bound to safeguard the ruling of the Speaker. I am not interested in seeing that what I may have said today, may be upset by a Chairman who follows me. The ruling of the Speaker is there. Though the honourable member speaks forcibly on one or two points, I understand that he wants to persuade the house to allow the country an opportunity to consider the Bill. That is all that he means (Honourable Member "NO. no.". I may say immediately I do not intend to go behind the ruling of the Speaker.) Any arguments that may be advanced for consideration by the house of the country at large is welcomed but not in a spirit to question the ruling of the Speaker.

Dr. Mono Mohan Das : On a point of information. I want to be informed whether the next ten minutes will be taken up by the honourable Member so that we who do not understand Hindustani could return to our hotels.

Pandit Thakur Das Bhargava : Since you have been pleased to say that you do not follow me and I want every word to be followed by the House and by your goodself I will speak in my broken English.

Shri T. A. Ramalingam Chettiar (Madras : General): Hitherto you have had no consideration for those who did not know Hindi. There is a large number of them here and if you do not care for them and you do not want them to listen, it is your own look out.

Pandit Thakur Das Bhargava : I had already decided to speak in English and my friend's orders are only supplementary. But after what you have been pleased to say, I will continue in English.

Mr. Deputy Speaker : Whatever has been heared has been heared in Hindustani.

Pandit Thakur Das Bhargava : I am not going to repeat all that I have said as it will not be possible. In future I shall submit to you what I have to say, so that I may not be charged for attempting . . . .

Mr. Tajamul Husain : There should be no repetition.

Pandit Thakur Das Bhargava : I do not want to be ordered by Mr. Tajamul Husain. If he does not want to ...

Mr. Tajamul Husain : I am addressing the Chair.

Pandit Thakur Das Bhargava : I do not want Mr. Tajamul Husain to make unintelligent interruptions.

Mr. Deputy Speaker : I am sorry that, Mr. Tajamul Husain goes on interrupting repeatedly. I am here to protect the house so that there is no repetition. It is unfortunate that we are spending much time in this way.

Pandit Thakur Das Bhargava : I do not want to repeat. I submit that the manner in which the Honourable the Speaker gave his ruling I respect it and I will not say a word against the ruling, though I maintain. Sir, that ruling is not the last word.

Mr. Tajamul Husain : It is the last word in this House.

Pandit Thakur Das Bhargava : I am not going to be taunted by these things. I think the House can revise its own order. I can quote a ruling to this effect from the book 'Decisions of Chair. At the same time, let the house not think that I am asking the Deputy Speaker to review that order at this stage. I am not doing so. Let the House not be impatient. But may I ask where is the rule that a ruling once given cannot be revised ? There is no such rule. Since I am not attempting to get the ruling revised., this does not arise. What I was saying was that the ruling of the Speaker was to this effect that the Bill was considered along with this redrafted Bill not in the actual sense nor in the technical sense in which we understand what

"consideration" is. I submitted for your consideration that in the technical sense in which we use the word "considered" this Bill was never considered.

Shri Mohan Lal Gautam : I beg to state that this is a repitition of what he spoke in Hindustani.

Mr. Deputy Speaker : In so far as to enable me to understand the full implications.

Pandit Thakur Das Bhargava : Without these preliminary remarks I could not make myself understood and those who know would have realized that I could not do more than this.

I was submitting with a view to convince you that as a matter of fact the real consideration, technically so called, was only given to the redrafted Bill. I said that I wanted to submit certain arguments : firstly, the report says that "we confined our deliberations to the redrafted Bill". Secondly, Sir, the dissenting note of Bakshi Tek Chand as well as of Balkrishna Sharma says the same thing. I do not want to read further because the members have read it and it will be waste of time to read it again. When Mr. Balkrishna Sharma spoke the Honourable the Speaker was pleased to accept his statement. He again repeated in his speech that "we confined our attention to this redrafted Bill" : and when you see the report you will find that in the report itself there are some indications for instance in clause 99 that only the re-drafted Bill was considered in the technical *sense.*

Mr. Deputy Speaker : I am not able to follow what the honourable Member is driving at so far as this is concerned.

Pandit Thakur Das Bhargava : I am sorry I have not heard what has fallen from Mr. K. C. Sharma.

Honourable Members : Order, order.

Mr. Tajamul Hussain : Sit down !

Mr. Deputy Speaker : If you will permit me I will try to get along. There are two questions. If it is a question that we ought not to proceed with this Bill, then that point has been decided, The Bill has been taken into consideration. The Speaker has said that this Bill was before the Select Committee and with the other amendments that have been tabled. Therefore, so far as that matter is concerned, I may immediately say I am not in a position to go beyond the ruling of the Speaker. Apart from the question of a similar case in the Civil Procedure Code, a ruling has been given and it is not desirable to go over it in the same case. It may not be a precedent for some others.

When it comes up in any other connection it will be open to the Chair or members of the house or whoever might occupy the Chair for the time being to go behind the previous ruling. At this stage in the same proceedings I am not prepared to go behind it. In these circumstances I would like to ask the honourable member for what purpose these arguments are raised. If as I understood sometime ago, it is only for the purpose of persuading the House to accept the motion for circulation in view of the fact that the Select Committee did not look into the original draft but the other one, both of them were before the House. So it is not as a point of order but for the purpose of persuading the House, which I can understand. For that reason May's Parliamentary Practice and other rulings need not be referred to. So far as the matter of law is concerned enough has been said and I would request the honourable member, if possible, to conclude this portion of his argument and proceed to some other matter;

Siri R. K. Sidhva (C. P. and Berar: General) : Sir, the previous speaker, Pandit Thakur Das Bhargava said that the Speaker's ruling is not final. May I, Sir,' draw your attention . . .

Mr. Deputy Speaker : I do not want any further arguments on the matter. I have already given my ruling that so far as this proceeding is concerned the Speaker's ruling is final. I cannot allow any questioning of that. It is therefore unnecessary to reinforce the argument or to strengthen my hands.

Pandit Thakur Das Bhargava : Sir, it is far from my mind to invite you to give a ruling contrary to the Speaker's. I am not going to request you to do that. I can quite understand that it is not desirable to review a ruling when it is given in the same case, though I know according to law you are perfectly competent to give another ruling. The law is not so narrow as not to provide for cases in which injustice is perpetrated. So I shall desist from speaking any futher on this subject that the ruling of the Chair may be looked into. What I am submitting is mat mere are several motions before the House and it is not the only motion for circulation. This Bill could go before the same Select Committee and it could come back to the House in 15 days. As I submitted already it is not a matter of dilatory tactics. All that I want is that the house should adopt a procedure which is according to law and which is fundamentally right. I am a member of this House and as such I have a right to see that the Bill sent to Select Committee is considered in a manner which the law requires. There is no escape,

therefore, from its recommittal to the same Select Committee. This is the reason which I want to submit before you. After all the taxpayer has to pay for every minute of the time taken in this House and I hate to take a dilatory or obstructionists attitude. All the same . . .

Mr. Tajamul Husain : You are doing it all the same.

An Honourable Member : He is again on the Speaker's ruling.

Pandit Thakur Das Bhargava : I hope the house will bear with me for a little more time . . .

Mr. Deputy Speaker : Is the honourable Member likely to take more time ?

Pandit Thakur Das Bhargava : Yes, Sir.

(*The House rose for lunch*)

The Assembly re-assembled' after Lunch at

Half Past Two of the Clock

Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

Pandit Thakur Das Bhargava : Sir, when the House rose for Lunch I was submitting for your consideration that the functions of a Select Committee are to go through the text of the Bill word by word ; the function of a Select Committee is to go into the text of the Bill clause by clause, and if necessary, word by word. I would refer to May's parliamentary Practice.

Mr. Deputy Speaker : May I request the honourable Member to proceed to another point because I have already given a ruling ?

Pandit Thakur Das Bhargava : I respect your ruling. You were pleased to say that you are not going to reverse the ruling given by the Chair and I do not want it to be reversed. As a matter of fact I am unfortunate that I have not been able to make myself fully appreciated. The ruling of the Chair says that this Bill was with the Select Committee at the time when the draft was being considered. I do not dispute that at all. My dispute is that the functions of a Select Committee were that they should have gone through the original Bill clause by clause and word by word. It is not only this. As the House is bound so is the Select Committee bound to consider the Bill clause by clause and word by word.

Mr. Deputy Speaker : We will assume that under the ruling both the original Bill and the amended draft were there and they looked into it clause by clause. What follows next? Is it the question that we ought not to go into this and it is not competent to do so ? If that is so, it has already been ruled. When once it has been ruled how is it open to go into it again ?

Pandit Thakur Das Bhargava : On a question of fact I would still request the Members of a Select Committee, to kindly enlighten the House whether both the Bills were taken and considered together. Assuming that this is correct my contention is that unless and until every clause of the original Bill was taken, unless and until it was considered clause by clause and word by word the requirement of law and procedure is not complied with.

Shri H. V. Kamath (C. P. and Berar: General): Has not the question of competence of the Select Committee been disposed of by the Speaker once for all ?

Mr. Deputy Speaker : I am trying to meet that point myself. Whenever I find it difficult, I will ask the honourable Member Mr. Kamath. to help me.

I have already said I am anxious to know what follows. I will assume for the moment that both the Bills were there and that the other draft Bill was considered clause by clause. What next ? What is the legal objection ?

Pandit Thakur Das Bhargava : I request you to give me two or three minutes to explain my position. There is another aspect of the case also. Besides this being a fundamental rule that the original Bill should be taken clause by clause and word by word the way in which the entire Bill is to be considered is that each clause must be considered of the original Bill, then the new clause, then the Schedule, then the new Schedule. Parliamentary Practice gives that. The next question is what is the effect. What follows—this is the question before you. I beg to call your attention in this connection to the general principles of practice and law as well as the particular point involved. In regard to the general practice the rule of law is absolutely clear that when any law or any practice or the general principle requires that a certain procedure is to be observed, unless and until that procedure is observed the thing cannot be regarded as having been validly done. For this principle I will quote another authority of the Privy Council itself which is 1936 Privy Council page 253.

Mr. Deputy Speaker : I am assuming the next step also. I am only taking the honourable Member's argument step by step. Let us assume it is so—that the Select Committee did not consider this or considered something else. Then the honourable Member evidently wants to say that I have no jurisdiction to go into the matter. It is with respect to that I want to say that it has already been ruled by the Speaker. I shall hear the honourable Member if he is able to satisfy me that that ruling does not cover the point he has stated. So far as I am concerned I have considered it carefully and I believe the same has been covered. I would therefore suggest to the honourable Member to proceed father without taking any more time. Already we have taken much time on this. There are other speakers also waiting to speak. I would like the honourable Member to dispose of this point as early as possible and go to any other point if he wants to.

Pandit Thakur Das Bhargava : My humble submission is that the previous ruling of the chair did not consider this point. The only point raised by Mr. Naziruddin Ahmad was that the motion cannot be allowed to be made as only the redraft was considered. That was the simple point. This point which I am urging in regard to taking up clause by clause was not even argued. The effect will be this that a Bill will be sent to Select Committee and if you don't observe this fundamental rule, any other Minister may, after the Bill, put a redraft, get it considered and the real purpose of this fundamental rule that it should be considered clause by clause will be defeated. This is sufficient ground that no person had a right to make any alteration whatever in the Bill—for this I would refer you, Sir, to the ruling of the Speaker in the Commons (page 301 of Hansard, Volume 215). If you agree with me in this and in the Committee being required to go through it clause by clause then the position is absolutely clear that this Bill must be recommitted to the same Select Committee. Let the Select Committee devote two hours—I do not want that the Report should not come in this session—I want them to devote two hours and consider the original Bill clause by clause, and we will consider it then. This point, I may submit was never considered by the Speaker and I beg of you kindly to consider this point.

Leaving aside this point as you have asked me not to spend any more time on it, I would take up the other points. Now the question is what is the effect of this. One met as I have already submitted is that we must abide by the rules, and the rules in a matter of this

kind are fundamental rules which cannot be disobeyed. Then what is the real effect of it? That I am submitting to you. Now the differences or discrepancies between the provisions of the original Bill and the Bill as it has emerged from the Select Committee relate not only to matters of procedure but to matters of great substance. In the Dissenting Note given by Bakshi Tek Chand and Pandit Balkrishna Sharma it has been pointed that as a matter of fact in the redrafted Bill very drastic changes were made and they have given examples of the changes. I am not satisfied that they have exhausted all the substantial changes in the minutes and I would beg of you to consider it from that point. When I began my speech I invited your attention to the fact that in this measure, as it has emerged from the Select Committee after the redrafted Bill was considered, many changes have been made which are certainly destructive of the institutions which we have not in the Punjab. I will first of all call your attention to the institution of appointment of an heir. In regard to the appointment of an heir we know the views of the Honourable Dr. Ambedkar. He himself stated that he thought that the adoption of heirs is an artificial affair. I also think so. We remember the speech made by Mrs. Hansa Mehta at the time when the Bill was sent to the Select Committee. She also made certain remarks. Now, according to the present measure, no person could adopt an heir in any form except in the *Debate* form whereas according to the original Bill the *Kritrim* and *Goda* forms were also allowable. So far as adoption is concerned adoption of a son is a mere fiction. How can such a son become a real son? But the Hindu law provides for it and I have no quarrel with those who believe in it. But in regard to appointing heirs to property, just as the Romans did by way of *Nominis Hereditio,* if the people in the Punjab had got practices like that nobody has the right to touch them. According to our institutions, in the appointment of an heir, though it is in effect just like an adoption; there is no religious efficacy, there are no particular ceremonies. There is no question of age. The son is not engrafted in the family of the adoption but he continues in his own family. There are various rules and the Punjab High Court has given hundreds of rulings over this point. That institution is too strongly fixed in the public mind and you will be tampering with the custom of at least a crore of people if you are not allowing it in this Code. According to the Hindu Code no other form of adoption will be allowed, that is the provision in the present: it does not go far enough. I understand that so far as custom is concerned, custom has been ruled out except to the extent which has been recognised.

When I read the speech of Dr. Ambedkar himself which he was pleased to deliver at the time when the Motion was referred to Select Committee, I found that his attitude was very reasonable and he made certain statements in regard to custom which are very much opposite to the provisions of the Bill. Sir, I doubt very much whether this Law Department Committee had on its personnel our Law Member himself. I do not know who those persons were who tampered with the Bill, but at the same time I can certainly say that I very strongly suspect—though I do not know it—that Dr. Ambedkar must not have been there because he is very anxious to see that the customs of the ninety per cent of the people are not affected—as I am anxious to see. Either this thing missed him—he may not have appreciated it—or some other persons might have been there who were not Members of the Select Committee. They entirely changed the face of the Bill, which they had not the right to do; then it was the other Bill which was considered—it is a fiction that the original Bill was there and considered. Sir, I would refer you to page 3652 of the proceedings (9th April 1948) in which Dr. Ambedkar said:

> "His second comment was that the Bill had not taken into consideration the customary law. He cited some ruling of the Privy Council. I should have thought that at this hour of the day it was unnecessary to cite the authority of the Privy Council because it has been well established by a long course of decisions, that so far as the Hindus are concerned custom would override the text of the " *Smriti*". We all know this. But what are we doing ? What are we doing is this. We are shutting down the growth of new customs. We are not destroying existing customs. The existing customs we are recognising because the rules and law which are prevalent in Hindu society are the result of customs. They are born out of customs and we feel that they have now grown so sturdy that we can indeed give them flech and life in the body politic by one legislation.

Dr. Ambedkar was referring to the speech of Srijut Rohini Kumar Chaudhuri: He also said :

> "that we had not taken into consideration the question of the tribal people, whose life is undoubtedly governed in a large measure by customary law. If my friend had read the definition in this code as to who is a Hindu and who is not and to whom this Code applied, he would have seen that there is a clause which merely said that persons who are not Muslims, Parsis, or Christians, shall be presumed to be Hindus : not that they are Hindus. The result is that if a tribal individual chooses to say that he is not a Hindu it would be perfectly open to him under this Code to give evidence in support of his contention that he is not a Hindu, and if that conclusion is accepted by the Court he certainly would not be obliged by anything contained in this Bill.

The position is this : if I accept my institutions as good, if I appoint my heirs according to the custom which governs me, then according to Dr. Ambedkar I am not a Hindu. That is my difficulty. Either you must provide for these one crore of people and accept their customs or. . . .

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I have no desire to interrupt my friend, but I must say that I do not accept the interpretation that he puts upon that part of my speech. It refers to quite a different matter.

Pandit Thakur Das Bhargava : I am very glad that I am wrong. It gives me satisfaction that Dr. Ambedkar did not want that the one crore of people should go out of the pale of the Hindu law. But all the same, the argument I was admitting was this. If this custom was good—and I claim it is good because according to the definition given in this very code, the custom is ancient, reasonable and not opposed to public policy or morality—I claim this custom should have been recognised by the Code. But this custom is not recognised. To a certain extent the *kritrima* form was adopted as a good form by the original Bill but the present Bill says that no adoption will be recognised except this kind of adoption which according to Dr. Ambedkar is governed by certain rules. What are the rules? A man must not be more than 15 years of age. He must be given by somebody in adoption. He must not have married. Even according to the present law of adoption these rules are not there. Supposing a Hindu's daughter and son-in-law have died then the daughter's son cannot be adopted; the sister's son cannot be adopted, even the nephew cannot be adopted if the parents are not there. It is common knowledge that even today this rule that if a person is married he cannot be adopted, is not in practice and according to law in vogue, it is not necessary that a person should not have married before he is adopted. Similarly about age. So, all these measures have been changed in such a way that they cannot fit in with the present conditions, or they cannot be useful to us or cannot govern us.

We passed in the Constituent Assembly that we want a Civil Code. Even if this were not the Hindu Code and if Dr. Ambedkar was charged with the duty of framing a Civil Code, (I think he will be so charged after the Constitution is passed.) he will certainly include this civil institution—the nomination of an heir—in the Civil Code also. A man may be able to help, in their old age, those who appoint him the heir. My submission is that this point alone is sufficient to see that as a matter of fact the re-draft is much worse than the original Code and full attention was not paid to the original Bill. If full attention had been paid, this thing would have been considered. Had it been considered clause by clause, you would not have arrived at this.

The Honourable Dr. B. R. Ambedkar : This part of the Bill was, if I may say so, very much considered.

Pandit Thakur Das Bhargava : I am very glad, Sir, that the original Bill was considered. Then the only technical point remains, that it was not considered clause by clause, there is intrinsic evidence that it was not so considered. What is the effect? Supposing there are provisions omitted. How were those provisions considered? When the entire attention was on the draft of the other Bill those clauses could not have been considered. This is not a technical matter...

Mr. Deputy Speaker : The honourable Member is aware that the House is not bound by whatever the Select Committee has done. The Select Committee have sent a recommendation ; it is open to the honourable Member to accept or not to accept it; if he does not accept it, he can persuade the House not to accept it. We need not go into that again. After all, some Members were there. It is not right to go into what they considered or what they did not consider, the honourable Member would do better in addressing the House as to why we ought not to accept a provision or why we should accept it.

Pandit Thakur Das Bhargava : I will accept your advice, Sir, I will not refer in future to what happened before the Select Committee. I will only say this point, with your permission. Even if the Select committee acquiesced in this fraud that the original Bill is not to be considered and the substitute Bill is to be considered, we are not bound. An accused, before a criminal court, acquiesces in a certain procedure which is illegal; then it does not bind him. May I quote some rulings? A Court is required to go into a question and find out for itself whether there is good evidence or record to bind an accused under section 107 Criminal Penal Code. The accused says, “I agree to be bound in that evidence”. The Court says, “You are bound”. But the appellate Court still rules that the right procedure was not observed and the acquiescence of the accused in a wrong procedure does not make the order legal.

Mr. Deputy Speaker : Is not the honourable Member satisfied with tearing the report of the Select Committee in pieces ? Should he also say they are “accused” ?

Pandit Thakur Das Bhargava : Those who are guilty of disregard of the fundamental rules of procedure which govern a Select Committee are today accused before the House. I am sorry I have to say something which may not be wholesome to some of my friends, but I do so

in all humility and with a view to safeguarding the rights and prestigious of the House. I now leave this point and come to the second point.

In regard to marriage and divorce which are very important questions, what does the Code say and what are the facts at present ? In Punjab no specific ceremonies are required for marriages which are called *Karewa* and *Chadar, Andazi marriages.* The woman puts on the bangles supplied by the husband or the husband puts the *Chadar* on the wife and there the matter ends. (*Shri Mahavir Tyagi:* "Charming marriage") It is very easy for Mr. Tyagi to avail himself of such a procedure. It is not a sacramental or civil marriage. Again, in the original Code there was a loophole. Such persons could come to court and get themselves registered. The changed rules is that unless the marriage is sacramental, it cannot be registered. There are other points on which I shall have occasion to speak before you, but I wish to make certain general observations in regard to what is happening in regard to many persons and what has not been considered from the point of view of the common man.

In the mofussil areas, the people are illiterate. They are poor. They do not know the intricacies of the law. On the question of divorce, when Dr. Ambedkar said that he was speaking for ninety per cent. of the population, I know that he was saying nothing but the truth. In regard to this ninety per cent. How does the divorce take place today ? They go to a petition writer and get a letter of release. Another way is they congregate together and put a white sheet on the woman.

The Honourable Dr. B. R. Ambedkar: And supply a good deal of liquor to the fellows assembled !

Pandit Thakur Das Bhargava : That may be so, but it is not part of the ceremony. What is the present law, Sir ? What have our leaders done for you ? I am a representative of those poor people. I include myself in them. But when Dr. Ambedkar just by his finger indicates that he is one of those he will excuse me if I do not agree. Dr. Ambedkar lives here in a paradise.

The Honourable Dr. B. R. Ambedkar : I have lived in Improvement Trust chawls for several years who charged me rupees three as rent.

Pandit Thakur Das Bhargava : You can crush them under your feet: you can crush them under your thumb, but Sir, do you think that any poor villager getting about Re. 1 or Rs. 1/8/- a day could go to a district judge without the help of a lawyer ? Dr. Ambedkar

is a lawyer. He wants that this world may be peopled by lawyers alone like me and by nobody else. What would happen to these people ? Will they go to a district judge for dissolution of marriage or divorce ? (*An honourable Member,* "Impossible") And this is not sufficient. Even if he obtains a decree, it should be confirmed by a High Court, which so far as Punjab is concerned, to the High Court at Simla. Now, this procedure is unknown to people. It is a great tyranny upon those people. You are legislating for those who live in the Marine Drive in Bombay or in the palaces of Calcutta and Delhi and not for these poor people for whom you have such a soft corner in your heart.

Shri L. Krishnaswami Bharati : He wants to make it difficult. Do you want to make it easy ?

Pandit Thakur Das Bhargava : Another answer is that they want to make it difficult. I do not want to make divorce easy. Absolutely not. I am in favour of divorce on one condition only, that you enact laws in which it may be very difficult to bring about conditions in which divorce may take place. Chastity and continuity of family life are the very pivot of our culture. But if I agree to divorce, it is because I see so many deserted women. It is on account of that I agree. How can a poor man who is absolutely illiterate be able to engage a lawyer and go to a district or high court ? It is impossible to accept this. This old Act of 1869 was enacted, not for the poor people of the Punjab or any other part of India, it was enacted for Christians who were of the same caste as the then rulers. There is a world of difference between them and these people. If you go through the provisions from article 38 to 50 of the Bill, you will come to the conclusion that such a complicated and intricate procedure has been laid down that it is very difficult to follow it. If you think deeply, you will find that the whole Hindu society will rebel against you if you pass those provisions. According to your law, if a man marries his aunt's (father's sister) daughter, that marriage is good; if he marries the daughter of his maternal uncle—it is in vogue in certain parts of Bombay, I understand.....(*An honourable Member:* "And Madras."). But so far as we are concerned it is regarded as highly incestuous. There is a very great difference. (*Shri Mahavir Tyagi:* " The man may be killed.") Mr Tyagi is not very far being correct. It is a fact that in all the villages of East Punjab—and I speak with such feeling not because I want to speak with force but I regard it as true if you allow

this thing to be done, that man shall be killed and nobody will associate with him. (*Mr. Tajamal Husain:* "Is there any compulsion ?"). If a man marries his sister or mother, is there any compulsion ? Is this an enabling measure ? This is going into the very vitals of the society. It is intolerable. It is impossible for us to be reconciled to this situation simply because in regard to some people there is such a custom. I do not say that those people should not be protected, but for them provision can be made.

Shri L. Krishnaswami Bharati: Exactly that has been provided if you refer to clause 7(5)—the parties should not be sapindas of each other.

Pandit Thakur Das Bhargava: May I humbly enquire if a daughter of the aunt can be married to a man ? I have seen the rules. I submit for your consideration that in these matters the law has been changed, and unless the law is brought to suit our conditions it is difficult for us to support this measure. That can be done. In the Select Committee amendments can be moved. I do not want that the Bill should be throttled or killed:

The Honourable Dr. B. R. Ambedkar: It can also be done by an amendment in this House.

An Honourable Member: I hope you will accept.

The Honourable Dr. B. R. Ambedkar: I shall be prepared to accept any reasonable amendment.

Pandit Thakur Das Bhargava : I am very glad, and to that extent I am agreeable to support this Bill.

Mr. Tajamul Husain: Does the honourable Member intend to finish today?

Mr. Deputy Speaker: The honourable Member seems to be interested in this than other person, who are affected by this Bill. I have been noticing it. I cannot ask the honourable Member when he proposes to finish. It is open to him to take a reasonable time without repetition.

Pandit Thakur Das Bhargava : It is not my intention to take one more minute than is necessary. If I am repeating, I may be called to order. If a Bill is there which affects the lives of thirty crores of people, it is not too much to consider it for several days.

Now I come to the provisions made by the Select Committee and to the most crucial questions in this matter. They are, whether in regard

to succession and maintenance, what should be our attitude. I fell strongly on these. As I submitted in my earlier observation, I am in favour of giving to the women of India rights over property, moveable as well as immoveable, so that they may be economically independent. But, at the same time, I am opposed to giving the daughter a share in the property of the father.

3 P. M

I want that, so far as an unmarried daughter is concerned, she may be given full share like the son as long as she does not marry. But as soon as she is married the position becomes different. I see that there is a lacunae in our law, but it may be met by enacting that, as a woman marries a man, then the man and woman, when they are united in love, they may be united in property. Ultimately the man and woman may be joint owners and, when the father of the husband dies, both of them may succeed equally. Further on, the devolution of the property may take place in a particular way. I know that perhaps the demand for equality may not be fully net thereby. But in a matter of this kind, I do not think our sisters are well advised in weighing every question in golden scales. The yard-stick employed by them is not correct.

May I submit that, in regard to maintenance, they have such laws and such provisions the equal of which is not to be found anywhere else. Sir, the question of succession and the question of maintenance must be considered together. If they are not considered together, the difficulty will be that the full implications of the provisions will not be realised. Now, in regard to maintenance the duties of a husband or a man are quite different from the duties laid upon women. According to the Chapter on Maintenance, the wife has a right to be maintained by the husband, but has the husband a right to be maintained by the wife ? I am only saying that the rights are not equal. I maintain that the rights cannot be equal. They are diverse. Ladies and men have to do different work in life and on this basis it should be so arranged that the woman gets her full right and not an absolutely equal right.

Then again, Sir, a father has a right to maintain a minor son ; but, so far as the daughter is concerned, what are the rights of a daughter. Sir ? If a daughter is widowed or is married or unmarried, in every ease and whatever the age of the daughter, her maintenance is absolute obligation. As a matter of fact so far as the provisions for maintenance are concerned, I certainly want to congratulate Dr. Ambedkar for proposing that the ladies should be protected in every way and that

they should be well provided for. But while this useful provision is there, there is also the other thing that the ladies should get a share in the father's property.

The Honourable Dr. Ambedkar told us yesterday that in times of old there was simultaneous devolution of property and that the daughter got about one-fourth according to Narad. I do not know what was the basis of social existance in those days and whether the family was then constituted as it is today. I do not know whether this point has been dealt with in some texts of Hindu Law. That is not an accepted proposition. Some say that this provision of simultaneous heirship refers only to unmarried woman. But, leaving that aside, I submit that, if in these times it was considered right, the question of questions is whether today, as we are situate after having observed the theory of Agnacy for a thousand years or more, are we justified in accepting the proposition that the daughter should get a share ? What happens in a family ? As long as the father is alive, the sons work with him in his business or in the field and they combine together to produce wealth. When the father dies of old age, that property which goes in the father's name is thus the result of the joint efforts of the sons and the father. Now, to say that the daughter should get a share of such a property which she had no share in producing—perhaps she was in some other place producing children, is not fair. Let me not be misunderstood. I do not want that the daughter should not be given full rights. She may have them. But I do not want that this innovation, which is of such a fundamental character that it will affect every home in our country, should be made. I know my people all right. Choudhari Ranbir Singh who is a Jat knows how his son-in-law will be received in the family. I have been a practising lawyer for forty years and I know that in the case of self-acquired property, the daughter gets a share when there are no sons. If this innovation is introduced in the villages, in regard to entire property the result will be endless trouble. In every home if you let the son-in-law and the father and the mother of the son-in-law to live together with aunt's son and his family, it will create an impossible situation. This is not because we do not love our daughters. We do everything for them. In our place, if a daughter comes home to her parents, something is always given to her by way of love.

Shrimati Renuka Ray : Daughters should not be born in this country.

Pandit Thakur Das Bhargava : To that I know what Dr. Ambedkar will say. He will say, 'Instead of son, daughters should be born. Do we not know that among many Rajputs, the daughters were killed ? I do not want that to be done. It is unnecessarily wrong. What I am submitting is that for hundreds of years we have lived in such a society. We have regarded the son as the very pivot of the family. Without a son the daughter does not count in the family. It is the son which protects a man from hell. (पतात त्रायते) If we were like the Muslims, we would certainly accept it, but it is very difficult. This interruption by Renuka Ray only brings into relief my argument that so far as the conceptions of the people are concerned and their mental outlooks are concerned, such an innovation would spell nothing but disaster. This is my humble submission and Mrs. Renuka Ray only supports me in this.

Mr. Krishnaswami Bharati : I do not know which part of the country he comes from, but it appears that he does not know the custom in the Punjab. In no other province I can say the conditions are the same. What are these conditions due to ? They are due to the fact that for thousands of years, our policy and our theory and our conception about the family has been exactly what has been in the Punjab. Sons-in-law are not all bad. Sons are not equally bad.

Shri Mahavir Tyagi (U.P.: General): It is the brother-in-law which matters.

Pandit Thakur Das Bhargava: There is a proverb which runs as follows :

(Translation of Urdu proverb)

(The following are the efficient causes of strife:

(1) Construction of house in the place meant for deposit of village refuse; (2) A field in the vicinity of village common ; and (3) The habitament of son-in-law in the village.)

Another proverb.

(Translation of Urdu proverb)

(The yama, the son-in-law, the maternal nephew, chowkidar and the goldsmith can never be yours. You may try them if you please.) This is the truth. Let me say : Ask any person to go to the Punjab and find out among the Sikhs and Jats.

So far as this Bill is concerned, when this Bill was introduced, I remember that in the Objects and Reasons, this thing appeared:

> "The Bill aims at providing uniformity in all branches of Hindu law for all provinces and for all sections. The old complex, intricate and different provisions

of Hindu Law have also been simplified. Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community. Their only effect is to give a growing body of Hindus, men and women, the liberty to lead the life which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways."

Now, Sir, in this very spirit, Dr. Ambedkar spoke yesterday. We want to see both the sections, the enlightened and the non-enlightened are accommodated. My humble submission to him is that so far as that is concerned, he is right; but for those humble people, whom you will neither regard as enlightened nor non-enlightened on the path of social life, you have not given the right provisions in the Bill and my humble request to Dr. Ambedkar is : Let him also kindly allow them to live on this earth.

Now, Sir, the very essence of a codification is that it includes certain enabling measures to accommodate the progressive and recognises customs which have grown in spite of texts to the contrary. It was never intended that established rights and provisions of law should be changed in this ruthless manner, which will create bad blood in the whole of the society. All our customs and all our cherished institutions are being crushed by this Bill.

When I come to the other provisions, as regards the succession, the position will be still more astounding. Now, Sir, so far as the Mitakshara is concerned, we know the consanguinity is the basis and so far as the Dayabhag law is concerned, religious efficacy is the basis of inheritance. Dr. Ambedkar has been kind enough to give us another basis of inheritance. I do not want to say that he is far from wrong in what he is doing. He is doing the right thing, but I do not know what is the barometer for weighing this natural love and affection. Love and affection may also be perhaps understood. What is natural love I do not know. According to our conceptions, the brother is very dear to us. In our sacred Ramayan, in Lakshman, brotherhood is enshrined. Sir, 'Uncles' who are just like parents are very dear to us. But what is the position of 'uncles and brothers' in Hindu Code. If I were to tell you how that position has been affected, where they have been relegated, where they have been put, in the list of heirs you will simply be astounded. If you kindly see the Seventh Schedule which has been sought to be made applicable to a Hindu in regard to inheritance, you will find that the first clause includes seven kinds of people and I want to know, Sir, how this new principle of natural

love and affection is affected by this provision. In the first place Son ; widow; daughter: this I can understand very well. Then you find 'son of a predeceased son': Even there I will allow it. Then comes 'widow of a predeceased son'. Sir, I do not understand how under the law of natural love and affection she is preferred to a daughter, son or an uncle. I do not think that so far as the question of natural affection is concerned, the widow of a predeceased son, or son of a predeceased son of a predeceased son can be accepted. My opinion is that the Bill is based on a wrong stand-point if it provides for them. I can understand if this is only for providing for ladies, if they were not provided elsewhere. If they wanted not a widow, but the wife of a predeceased son or the wife of a son, I can understand it.

The Honourable Dr. B. R. Ambedkar : This is by statute. If my honourable friend will read the Women's Property Act, 1937, he will understand why these people have been put in the category simultaneously.

Pandit Thakur Das Bhargava: The friend of Dr. Ambedkar knows it quite very well. But in that 1937 Act when that provision was made, the 'daughter' was not included.

The Honourable Dr. B. R. Ambedkar: I have said so.

Pandit Thakur Das Bhargava: You want to add this to enable the daughter to succeed a father and succeed the father-in-law too. This is absolutely unfair. I do not see why you do not provide for this when you are making a new Code. You were making laws in which all claims should have been satisfactorily met. How should you have put in these provisions, because the Act of 1937 was there. I do not think this committee was justified in doing this. They ought to have given a full code in which every claim was satisfied. You cannot justify it otherwise. Therefore, you took protection under that Act. That is the position, Sir.

When I come to clause 2 of the original bill the 'mother' was considered as the better heir, because the 'mother' was a class by itself and the mother succeeded alone. Here I can understand natural love. Now the father has been placed along with the mother and they both come together. But if you proceed further what I maintain will be better understood. When you come to the second case, you find son's daughter, daughter's daughter. The son's daughter has got a special place in Mitakshara law and according to Mitakshara, she is one of the favourite heirs. What happens now, Sir, is that in the original

Bill in the first class, the daughter's son preceded mother and father. Now the daughter's son is sent on to the bottom. Then if you proceed further, Sir, in class IV, the brother and the sister come. And in class V, brother's son, sister's son, brother's daughter all come in. I can only state that a brother's son is made equivalent to a sister's son and a sister's daughter. Now, this is equality run mad, I should say. In our families, we know what is a brother and a brother's son. This is the result of the system or the institution of a family as we have been observing for the last 1000 years. We cannot get away from this violent conflict. You are introducing provisions in this Bill which will make every person rebel against you, because these innovations in practices cannot be made by order. According to the provisions of this Bill, every Hindu, male and female has got an absolute right of making a will and every male and female in future will be absolute masters of this inheritance. You have given in my hand a power to the detriment of the ladies and I do not want that it should be used to the detriment of the ladies. After all, a father when dying will be within the power of the sons and the sons will see that the father disinherits the daughters by will. While I am saying this, I may tell you, I have a daughter and I have provided for her when I provided for my sons. In the house in which I have been living with my sons and in the house in which my sons' wives have been living, I do not want that the daughter and her husband, her father-in-law and mother-in-law, her elder-brother-in-law should all come and occupy some rooms. That would be an impossible proposition.

Mr. Deputy Speaker: Under the Bill there is not much chance of the father-in-law and mother-in-law being protected.

Pandit Thakur Das Bhargava : They can come with the son-in-law. I will show there is a very good chance of a thing like this taking place. The father who does not want to touch even water at the house of the daughter, will get the property of the daughter, and her husband. I am coming to that subsequently.

I am only submitting that the ladies will be under a greater jeopardy of losing their rights in this way. The father will disinherit the daughter. She is not a heir according to class I; she does not succeed to the property of the father-in-law as wife of the son; but she succeeds only as a widow. Where is she then ? I do not understand. She will be put to a great loss. I want, Sir, that the women should get their full rights. The theory which I have propounded.—I have not given

very great thought to it—I have only submitted it for the consideration of the entire House and for the consideration of Dr. Ambedkar—I do not know how it will affect other interests—there may be flaws and I do not vouch for it—but I consider, at the same time, that it will be a better arrangement than the present arrangement. The theory is that an unmarried daughter succeeds simultaneously equally with the son. The woman on marriage becomes joint owner in husband's property as husband would be joint owner in her property, then both succeed in husband's family.

Then, again, Sir, what would happen to the brother's son ? and the sister's son ? They are both on the same level. The brother's son lives in the same house probably or next door and does service everyday ; the sister's son lives at Allahabad or Madras or some other place. How will they be equal. In regard to other provisions also.—I want to be brief.—If the House wishes me to go into the other provisions also, I am perfectly prepared and I have got full notes about the changes and how they affect us—but I would be taking up the time or the House in such a manner as to deprive the other members of their opportunity.

Honourable Members : You may go on.

Pandit Thakur Das Bhargava : There are many other considerations which go to show that this provision in clause (2) is not well founded either from the point of view of consanguinity or religious efficacy and even from the point of view of natural affection and love.

Next, I come to the succession of the female. After the Hindu Code Bill comes into vogue, the lady succeeds to the property of the father as well as to the property of the husband. Suppose the lady dies leaving husband and children, it is clear that the husband has been given the right and the children also succeed. So far so good. Then, when the husband and the children are not there, who succeeds ? The father and mother of the lady. These people—there are lakhs like them—who do not even want to touch water from the house of the daughter, will get the property. *(Shri L. Krishnaswami Bharati:* "Why" You cannot understand this ; it is my difficulty. You cannot realise this. May I submit, Sir, that as soon as the father gives away the daughter to the son-in-law, the father never goes to the house of the daughter, never takes his food in her house and never even drinks water in her house, so that the purity is maintained that no daughter may be

given in marriage for mere consideration or any other material gain. That is the basis. There are many people who would not even go to the village where the daughter is married. We must recognise facts as they are; it is no use saying that they do not know. It is quite possible that they do not know. It will happen that the father-in-law would get property bequeathed by the lady. That will be an intolerable position. Supposing a lady does not leave a husband and children and neither a father nor a mother, what happens ? This is a crucial point. The property has been inherited by the lady from the father. The property, in the absence of husband, children, father or mother will not go to the son of her father. Let me put position clearly. The property belongs to A's family, The property will not go to A's family, the brother of the woman, the real brother made of the same flesh and blood, but the property will go to hundreds of people of the husband's family of the list that you have given here. Since the woman is dead, leaving no husband and children, father and mother, in that case, the property is not inherited by her brother or brother's son or others, but it goes to the family of the husband. Why is it so. Because your Select Committee have not been able to shake themselves from the considerations which have been influencing the entire community for a very long time. (*Shri L. Krishnaswami Bharati:* "What is the present position ?") We are not concerned with that. You know the present position very well. It is *stridhana* ; it is not inherited by the daughter ; the position is different. I was submitting, the property of one family is not inherited by the brother of the lady, but it goes to other people. This is a position which I cannot understand. But, you must realise that this is the position. You may remedy it; I beg of you to remedy it. This is a question on which you will be well advised to review. This is one of the points which I submit for your consideration. I will leave this question of succession at this ; there are many other considerations which could be placed before you.

Then, I come to the power of disposal. I quite understand the very great hardships when there were restricted rights in regard to women's property. So far as the joint family is concerned, it is sought to be crushed under this Bill. The joint family is mouldering away ; it is crumbling. From a very long time, certain circumstances have so arranged the fate of the joint Hindu family that it cannot survive. Sir, I do not want to shed tears over its going away. The Income-tax Act is the greatest monster in killing this joint Hindu family. I know that

the joint Hindu family cannot stay for long. But, so far as this Bill is concerned, if it says that in future they will be tenants in common. I have no quarrel. This was given in the other Bill and this is also given in this Bill. I am too much of a realist to cry that my sacred ancient joint Hindu family goes away. There were days when there was great use for the joint family. Now we are turning back to co operative forming, co-operative holding of properties, etc. At the same time, we are providing social insurance, etc. We are doing all these things in such a manner that we are reverting back to the principles on which the old joint Hindu family was doing. That is beside the mark ; so far as the law goes, so far as the general circumstances of the country go, so far as this joint family is concerned., I do not think that it must be said

The Honourable Shri Jagjivan Ram (Minister of Labour): It is a lost cause.

Pandit Thakur Das Bhargava : Whatever you may say, Sir, there is no question of cause here. I do not like the idea that legislation should kill the joint Hindu family.

In regard to marriage, Sir, I have to submit a few considerations more. It is a very difficult matter.

An Honourable Member: That has been dealt with before.

Pandit Thakur Das Bhargava : I have placed some considerations before.

An Honourable Member : This is second marriage.

Pandit Thakur Das Bhargava : I find myself in very good company when I make .....

The Honourable Shri Jagjivan Ram : You are with the Law Minister himself.

Pandit Thakur Das Bhargava : Shrimati Ammu Swamindhan, Mr. Shiva Rao and Shrimati Renuka Ray wrote as follows :

"Regarding claus 6 of Part II of the Code on 'Forms of Hindu Marriage we would point out that there are, in certain parts of the country, long-standing customs or usages which recognise as valid marriages which would not come under the category if either sacramental or civil marriages in accordance with the provisions of this Part. We would therefore suggest a proviso at the end of clause 6 to confer validity on such marriages."

What is this ? I understand that the trouble is the same in that part of India from which Mr. Bharati comes.

Shri L. Krishnaswami Bharati : Luckily I do not come from that part. I come from Tamilnad and they come from Malabar.

Pandit Thakur Das Bhargava : So far as the question of adoption is concerned I find a similar thing in this dissenting note. So it is not the Punjab alone. It is also in other parts in which the rules of marriage and divorce and adoption are different from the orthodox rules and all of them should be protected, and I am very glad that these dissenting members represented their constituencies too well in making the observation.

I was speaking of sacramental marriages. So far as the non-sacramental marriage is concerned I have not said a word about it. I want that to be protected. In regard to sacramental marriages, the havoc played by the Committee is inexplicable. I do not understand for once how the civil marriage should be included in this chapter. If it is a civil marriage, it is a subject for the civil code. We have the Act of 1872. It is a very defective Act and I have submitted a Bill to put it right, and the Bill which I moved a few days back in this House for validating the marriage of all others, that would protect us much more than the inclusion of this civil code here. I am in favour of a civil code for the whole of India and I want the rules to be the same for all. It is our duty to do so but why should we include the civil marriage here ? If it is to take away the evil effects of that law, then the other course is open. What happens in this civil code and the new kind of marriage which is neither sacramental nor civil but a registered sacramental marriage in which though the marriage takes place by virtue of sacrament, yet if it is originally incestuous, then you go to a registering officer and you get it validated ?

Shrimati G. Durgabai: It is only optional !

Pandit Thakur Das Bhargava : I have replied, it may be optional but does it conclude the matter ? The Hindu Code says that there are five conditions when the marriage takes place otherwise the marriage will not be permitted. The words are “conditions relating to sactramental marriage”. That means in fundamental matters, as soon as one of the provisions is contravened, you allow the law to secure you to get away from the effects of that flaw. As regards the prohibition of the sapinda relationship, I beg to submit the difficulty is that the uniformity of law which we aim at is very difficult to secure in a country like India. It has been said that bringing about such a uniformity will be miraculous. I congratulate Dr. Ambedkar in working out that miracle and I am for this miracle being worked out. But when there are legal difficulties in local matters in which the conflict from the

present position to the position that we want to see enacted is very great and very violent. I would ask of the House to so arrange matters that this conflict is avoided.

Now, Sir, I come from a place in the Punjab where there are villages upon villages having the same gotra and they believe that they are descended from the same common ancestor. You know this sapinda relationship which restricts the line of ascent and descent to three or five is not sufficient so far as those people are concerned. I do not want to say that you broaden it further. At the same time this will be unacceptable and a thing with which we could never reconcile ourselves, if you ask us to allow a marriage of sapindas. This is an impossible position so far as we are concerned, and if you allow this then you are really cutting at the very root of our social system as is enjoyed in the Punjab for a very long time. This is my feeling also for the whole of India. Of course, I do not speak for the rest of India because there are certain gentlemen who question it. My view is that in the whole of India the position should be the same. Well, I am not dogmatic about it, but this is a very wrong rule that we are enacting and that the requirements of section 7, that marrying couple should not be sapindas should be waived in so far as registered sacramental marriages are concerned. So far as the Sarda Act went, a marriage once celebrated according to the Hindu Law and our notions, was always indissoluble. We are making a break from this rule in so far as we are providing for disrupting marriage by codes or customs. Otherwise when rule 3 has been abrogated, you can convict a man and send him to jail. I have submitted to the House through a Bill that where a person not of proper age is married, instead of a fine he should be imprisoned and the law should not be vested with the discretion that he should be allowed to go free. The whole country was against the Sarda Act and the present provision shows that if Rule 3 is followed, then the marriage will become avoidable. This is going against principles which we have not accepted for more than 20 years.

So far as the main provisions in the Hindu Code are concerned, I have dealt with them in brief with a view to bring them to the notice of the House and since my feeling is that the Bill is not to going to be throttled out, I will deal with those matters when the clause to clause stage is reached.

To sum up, I want to say that so far as this House is concerned, it will be well advised in either sending this Bill out for circulation,

because in that case nothing will be lost—as a matter of fact much will be gained: public opinion will be consulted and the public will feel that they are being ignored. As a matter of fact many amendments have been made even after it has come from the Select Committee : even before the Select Committee the people in general did not know anything about it. In spite of all that has been said, I am convinced that people know about it. Dr. Ambedkar referred us to the two gentlemen who drafted this report and said that they were very good people and not such people as could be regarded as very much advanced in their views. I have got with me so many opinions of high court judges and more opinions are pouring in every day. All these people are against it. I did not want to read them out from the evidence that is printed in the report of the Hindu Law Committee. I would with your permission refer you to page 13 of this report, where there is the evidence of a lady, Miss Subrul, Principal, Fateh Chand College for Women. She said:

"The unmarried daughter, one who is not fit for marriage, or one who has made up her mind not to marry should get the same share as the son and she should also be subject to the same obligations as the son. A married daughter should not have any share in the property. If an unmarried daughter marries, her share should go back to her brothers."

When the Committee was in Lahore to record the evidence, it is said in the report.

"As a matter of fact in the Punjab where I was presiding over the meeting of this committee some 500 women entered the Commercial Museum Hall, Lahore, where the meeting was held said with folded hands 'Do not bring son-in-law into the family and ruin our business."

In regard to business if you kindly consider what effect this will have on the business people you will simply be scandalised, A prosperous business conducted by a father and his sons is going on. The father dies and the business is run by the joint efforts of all and then the son-in-law gets in. What will happen to the business ? It will go to dogs. I would refer the House to page 139 of the report. It is wrong to say that all the ladies are in favour. Thousands of enlightened ladies did not favour this, not because they did not want the daughter to be given any rights. I reiterate that so far as I am concerned as also those persons who think in the same way as myself, we do not want to see that the daughter is not given the full right or that women are not given their full right. We want women to rise to the same stature as man and to have the same rights. I am one with Dr. Ambedkar. I am like him a progressive conservative. I like

that expression very much. I do not belong to the advanced school of thought. This Bill is not either revolutionary or radical, as Dr. Ambedkar said. This Bill deals with certain matters but the Bill has to be improved. Today there is in the Hindu society some sort of introspection and it is able to see that there has been decay. It is our duty to see that the dilapidation is repaired in the words of Dr. Ambedkar, I therefore submit that from this point of view let no body run away with the thought that we do not want to do justice to our sisters and daughters. If our sisters and daughters carry an impression like this they are entirely mistaken. I know about your good self, Sir. You are also in favour of the view that their rights should be secured. I therefore submit that this should not be looked at from this point of view. I want this Bill to be circulated and it may be taken up after the next elections when we have a more representative House. I do not maintain that this House is not fully competent or sovereign. If the House persists in proceeding with this measure there is no wrong in it but I would like to see that this Bill is considered and that justice is done to every interest concerned. At the same time what I do want as a lawyer and as a member of this House is that this Bill should be considered again by the Select Committee, even if it be for two hours, so as to remove all these defects and to legalise the original Bill being considered clause by clause and then this very Bill may be substituted if the Select Committee so pleases. I maintain that it is absolutely wrong to say that the original Bill was considered in the way in which the law required it to be considered or that the amendments were moved or accepted in the usual manner as is done in every Select Committee. This was not done. We should be quite cautious that we do not allow the thing to be done in a way which is fundamentally wrong. I would beg of Dr. Ambedkar to consider the question if he is satisfied that my objection is right. I would beg of him kindly to consider the point of view of the poor Punjab people who had no representation on the Hindu Law Committee.

Honourable Members: What about Dr. Bakshi Tek Chand ?

Pandit Thakur Das Bhargava : If you speak of Dr. Tek Chand who was on this Select Committee I will be very glad if you will give his due. If he had not written this dissenting note where would you have been ? If you accept him as a man whose views ought to be respected then go by his views. This is my submission. I am only a mouthpiece or a loudspeaker of what Dr. Bakshi Tek Chand

has written. He has said in his note that you should allow nomination of an heir, that you allow divorce to take place in the same manner in which it is taking place today and he has also mentioned about non-sacramental marriages. In all these points when you take his name I beg of you kindly to follow him in what he has said in his dissenting note.

Mr. Deputy Speaker: Shrimati Renuka Ray.

Mr. Naziruddin Ahmad: Sir, my grievance is not being heard.

Mr. Deputy Speaker: The honourable Member's grievance will not go unheard.

Mr. Naziruddin Ahmad : May I submit that I had certain points and I would like to have got the advantage of those points being made and the replies given to them.

Mr. Deputy Speaker: The honourable Member will have the advantage of his observations going unchallenged.

Mr. Naziruddin Ahmad: I do not like it, Sir.

Mr. Deputy Speaker: I have already ruled that the honourable Member will not have his turn now. I have called Shrimati Renuka Ray.

* **Shrimati Renuka Ray :** The Bill that is under the consideration of this House now, or rather the principles embodied in it, have been on the anvil of this legislature since 1943 and the insistent demands for these changes that are embodied in this Bill have been before the country for a very much longer time. It was more than 100 years ago that Raja Ram Mohan Roy wrote a treatise called "The Rights of Females to inherit property and their rights of marriage", and this matter was first brought to public attention. Since 1931 and 1932 there has been an insistent demand throughout the country, and at that time the need for the removal of legal disabilities of women and the need for a uniform and comprehensive code of legislation was made manifest in this country. Due to the fact that on the anvil of the legislature there were a number of Bills dealing with this subject, due to the fact that piecemeal legislation was leading to anamolies in law and because of this insistent demand, the Government of that day was forced and compelled to appoint the Hindu Law Committee better known as the Rau Committee on Hindu Law. It was as a result of the report of this Committee that the two Bills on intestate succession and marriage were introduced in 1943. At that time the opposition that has now again reared its head also came to the forefront. The

*C.A. (Leg.) D., Vol. II, Part II, 25th February 1949, pp. 925-29.

substance of the opposition was the same as it is now but the approach was a very different one. The approach was naturally different because it was made to an alien government. The approach was made on the lines that they were the loyalists who were the ardent supporters of the Government, that it was the Congress, which was agitating, that was behind this demand which the women of India had brought forward and that the Government should not give any credence to it. I am not making statements without foundation. It is true that the nationalist press of this country did not give that opposition much chance. Yet the opposition did bring out many pamphlets wildely abusing our national leaders, not even sparing our belovd leader Mahatma Gandhi. There was a weekly paper produced called 'Hindu' in which these Bills were attacked and they were attacked on the basis that the national leaders of this country were behind it and it was due to their advice and under their influence that this was being done. Coupled with this factor, when the Government found that the women of this country were not willing to agree to those machinations which wanted to further divide and bring discord among them, when they realized that women were against separate electorates and that they stood behind those who were in the vanguard of the freedom movement of this country, then there was not much hope that a legislation of this type to improve the lot of women and to give them their rights would go through with the alien Government in power. It was then that we realized that it was necessary to wait till a national Government came in. Later the Government appointed the Hindu Law Committee, and the Bills were re-circulated. This Committee as the House knows, presented its Report after touring the country, taking the opinions of thousands of individuals and organisations in 1946 after the Intrim Government came in. I will not recapitulate the subsequent steps when this Bill was reintroduced after 1947 in the present Legislature as these are well known to the Members of this House. But I merely want to point out that the opposition which is in substance the same, in character the same, has a new approach. I would like to know who are they who were opposed to the Congress in those days to say today to the Congress 'You will lose your elections if the Hindu Code Bill goes through.' I would like to ask them when they were deliberately against the movement for freedom—when they neither supported it nor symalhised with it—when it was in spite of them that the Congress won the elections and the country's freedom, who are they today to tell the Congress that they will not win the elections. If anyone of them comes into the legislatures of the country today it is by the grace of the Congress and so it shall be tomorrow also.

This opposition that has reared its head and which is similar in character as before, has resorted to many devices. It has resorted to various types of tactics. The House is aware of the fact that the Governor-General's name was used and this was found to be a fraud. Only two or three days ago in a newspaper in Calcutta I saw the name of Shyama Prasad Mookerjee after that of two or three other well-known oppositionists and I was a bit surprised until I saw in small brackets the words "(of Uttarapara)". Sir, it was obviously intended to mislead, and if questioned they would have pointed out "of Uttarparah" These are the devices, these are the tactices that are being used by the opposition. As you know, we do not question those who have genuine differences of opinion. But this type of tactics that are employed today.....

Mr. Naziruddin Ahmad: On a point of information, is it not Dr. Syama Prasad Mookherjee ?

Shrimati Renuka Ray : No. It was not the Minister of the Central Cabinet. I do not know which Shyama Prasad Mookherjee he is.

Mr. Naziruddin Ahmad : I thought the description was "Dr. Shyama Prasad Mookherjee, President of the Hindu Mahasabha".

Shrimati Renuka Ray : That is not so. It was "of Uttarapara". Such are the tactics adopted by them that even Mr. Naziruddin Ahmad is taken in by them. The orthodox opposition has found its greatest champion from amongst the members of a community which recognizes the daughter's rights of inheritance. It is extremely surprising that the honourable Mr. Naziruddin Ahmad would deny to his Hindu sisters the rights that his own women have.

I would further say that there are some people who have asked "How is it that telegrams, circulars, and posters are being displayed by the opposition all over—at least in Delhi—and that M.C.A's are being flooded with wires ; and how is it that those who are in support of the measure do not do the same?" Sir, those who support this Code are also representatives of social welfare organisations; they are people who work for the good of this country. Today when there is a national emergency in regard to any funds that they have, they would not consider it right and proper that they should use such funds in sending wires and letters when they can be used for the rehabilitation of refugees. One wire to M.C.A's in this House costs Rs. 165. With that money for three months a refugee woman can be given vocational training for rehabilitation. Do you want that these wires should be sent

to you ? I think it would be wholly wrong for such a procedure to be adopted. If we have not issued posters and circulars and wires it does not mean that the demand for the changes does not continue to exist. I will not go into great detail on the provisions of the bill after the brilliant and masterly analysis of the Honourable Law Minister. It is quite unnecessary. Unity is something we desire in this country, and a uniform and comprehensive Code of law for Hindus who are the majority in the country is surely a necessity in that case.

Turning to monogamy I would like to ask, is there any one in this House or in the country who would contemplate with equanimity the fate for his own sister or his own daughter of being the first wife of a man who has married again. It is true that polygamy is not very customary : It is on the whole rare in the country. But in recent years we have seen that polygamy has become more frequent, and to the eternal shame of Indian womanhood. There have been women who have knowingly and willingly agreed to become the second wives of such men. I do not think that I need elaborate the point that law must come forward to redress the grievances and the miserable plight of the women who are first wives of such men.

Turning to inter-caste marriage and *sagotra* marriage, when in the Fundamental Rights of our Constitution we say that all discrimination on account of caste and sex and other such things should go, surely inter-caste marriage which is a permissible measure will be only the very first step towards it.

Mr. Deputy Speaker: Caste can go; how can sex go ?

Shrimati Renuka Ray : I said 'discrimination on account of caste and sex'.

Mr. Deputy Speaker: The honourable Member may go on.

Shrimati Renuka Ray : Turning to the divorce provision in this Code, I concede that these are restricted conditions. The home is the nucleus of society and I do believe that the primary reason for marriage is that it is for the protection of children and as such divorces should not be allowed on flimsy grounds, but for genuine cases of hardship we have to provide. Since 1943, when the Marriage Bill was first introduced, I have had scores of letters and scores of people have come to me with their daughters who have shown to me how grave and how terrible is the hardship which the women do suffer. Unless there is such a provision, both for men and women, it will not meet geneuine requirements.

Sir, let me dilate for a moment when I speak on this point, because the opposition about which I spoke have been going round telling many women who do not understand law or the provisions of a Code, that their own women were trying to bring in laws by which they will be divorced. They do not realise that it is only a permissive measure, that it is only the aggrieved person who can claim divorce, and for whom alimony is provided. These things are not mentioned. At hundreds of public meetings these matters were brought to me

4 P. M. and I had to explain the point, and I think the women Members of this Assembly can also say the same thing.

Turning to the joint Mitakshara family, I do not think there is any need for me to add one word to what the honourable the Law Minister has said on the subject. It has been fully amplified by him.

So far as the daughter's right of ineritance is concerned, it is the focus of the opposition. It is only natural because that alone proves that it is not bigotry so much, not blind prejudice so much, but it is the vested interests that are up in arms. The honourable the Law Minister has already spoken on this point, but I should like to say one or two more things. The economic status of a woman can only be established by the recognition of the daughter's right to inheritance. It was a point that was brought up by my honourable Friend Sheth Govind Das yesterday. He said—I do not know how far he believed in it—he said. "Why should we have inheritance ?" Certainly, I do agree that a time will come and must come—if we want and believe in equality of opportunity for all, if we believe that disparity of wealth shall go—a time must come when inherited property must go out. But until such time, if there is a difference between the daughter and the son, then that difference means a difference in the status. It is the daughter's status that has to be recognised; she as a daughter, as a woman, is a natural heir. It is not merely from the theoretical point of view that I mention this. We are dealing with intestate succession and it is far more natural that a father will not disinherit his daughter, than a father-in-law would, in spite of what my honourable friend Pandit Bhargava said. A woman's rights in the joint family, which in years gone by may have served a very useful purpose, have not under the existing conditions been so sure in recent years. My honourable Friend Sucheta Kripalani made a point yesterday which I would like to endorse. Those women or men who are social workers know that an analysis of the inmates of rescue homes in this country will go to prove how many of these women are those who have been

turned out of the joint family. Without having the training to earn their own living, turned out of their homes, these women have been forced to live a life of shame. That is a question which the Hindu society must face. I am sure those who propounded the Hindu laws would never have contemplated such a state of affairs.

Women are the mothers of the race. No race can advance till its women can be responsible mothers and conscious citizens. There has been a good deal of propaganda done about educated women. A handful of educated women, it is said, want this Hindu Code or want this very halting and mild measure of reform. Sir, so far as women are concerned, it must be a handful because after all the educated element of this country is 15 per cent and the women who are educated are about 3 or 4 per cent even now. So, so far as the women are concerned it must be a handful, but behind them are, not today only but from decades past, the large mass of enlightened and progressive men who stand behind them. It is not the women of this country who alone are responsible for the fact that there is no suffragette movement, no feminist movement in this country—it is because their champions have been enlightened men, for decades past. Today the same state of affairs exists and I am sure that the majority in this House are also behind us. It is not a demand from the educated women of this country but a demand from all those who want that India shall progress. For, without women becoming conscious citizens taking the rightful place in society, it is not possible for us to progress.

Sir, it is well-known that slaves have resisted when the Shackles of their slavery were removed. It is a fact serfs have objected to freedom. What is more, coming to our own country, it was held by the British that it was only the wretched Congress agitators who wanted freedom but that the mass of the people were quite willing to remain in the pathetic contentment of thraldom. If you speak today of pathetic contentment amongst the women, it is true, it is perfectly true that many women are not yet conscious. But is that a reason that you will not awaken them, that you will not make them conscious, that they should not become equal with men in the joint enterprise that is before us today of building a new India in an atmosphere of freedom ? I ask, is there anyone who feels that it is possible to go ahead without the women of this country ?

Before I conclude, I will say a word or two about what my honourable Friend Pandit Thakur Das Bhargava has said : I must say that I could not quite follow him. This morning he called into question

the competency of the Legislature, and in the afternoon just before he sat down he said that he.....

Pandit Thakur Das Bhargava : I never questioned the competence of this Legislature.

Shrimati Renuka Ray: So, I suppose what he said last is what goes. He spoke a good deal about the eleven notes of dissent. But as he knows and as the House knows, many of these notes of dissent were on minor issues and such notes of dissent are usually attached to all Bills and it does not mean therefore that a Bill should be recirculated. This morning Pandit Bhargava said that two wrongs do not make a right when he said that this Constituent Assembly obviously is not fitted to draw up the Constitution of India. I wonder, considering that it is such a wrong thing, how he remains in that wrong Assembly. I am not going to contradict him or speak again on all that he has said this afternoon, because I think it was very ably answered before he ever spoke by the Honourable the Law Minister and Pandit Bhargava contradicted some of them himself.

There is one last point that I would like to make. The cry has been raised that Hindu society is in danger because of this mild, halting measure of reform. I too think that Hindu society is in danger. It is in very grave danger—danger from those who would bind and fetter it; danger from those who would not allow out-worn customs to be changed but would allow them to choke up the life-blood of our society. If those who today appear to be so concerned about Hindu society would give a little thought, they would agree with what the Honourable the Law Minister said, namely, that you must repair if you want to survive. I do not know who has given a prerogative to some people to stand up for Hindu society. I do not consider those who wish to bind and fetter Hindu law which has been changing with changing times throughout the centuries to be the exponents of Hindu society and Hindu law and those who wish to improve it and bring it back once again to the culture and heritage of our forefathers as people against it. I think it is those who would bind and better it who are not the friends but the enemies of Hindu society. If Hindu society is to regain all that it has lost during the many years and the many centuries of decadence when Hindus were slaves, it has to come in line with the atmosphere of freedom that prevails in this country today. Men and women have to come forward equally to work for the country and there cannot be equality if there is no equality in the social laws

of this country. Therefore, I plead that those who today are opposing this Code should give it a little more thought. If they do not, it may be that Hindu society and Hindu law may be left behind, for the march onwards must go on and India is not going to go back to slavery or domination by others.

* **Shri V. S. Sarwate** (Madhya Bharat): I would offer my congratulations to Dr. Ambedkar for his learned and lucid exposition of the Bill, becoming as it was to a professor and an advocate that he is.

As regards the several provisions of the Bill, one would necessarily find himself in agreement with some and in disagreement with others. This is not the occasion to dilate much either on the points of agreement or on the points of difference. I would, in the general discussion, confine myself to certain broad principles and I would try to show that in these principles the Bill goes in a fundamentally opposite direction to the notions which have all along, in my humble opinion, been lying behind Hindu law.

There has been a considerable section of Hindu society against this measure. It cannot be denied ; it cannot be concealed. Some may say that it is a cry of "Religion in danger" ; it is sentimental; it is reasonless. All the same, those who are bent upon making legislation which vitally affects a society of more than 20 crores would do well to pause, ponder and consider its substance. They should consider what is there in the Bill which makes so many people—intelligent, educated people—to be against the Bill.

[*At this stage, Mr. Deputy Speaker vacated the Chair, which was then occupied by Shri S. V. Khshnamoorthy Rao (one of the Panel of Chairmen)*].

I submit that there are two reasons for this. The first point that I would refer to is the change in the nature of the joint property. I would submit that the co-parcenary aspect of the joint property has certain very noble ideas behind it. The co-parcenary means that there is a community of interest, as every member of the House knows. It means that every individual has the fullest right of enjoyment but he has no individual share nor the right to alienate the property. The whole trend of modern society, the progress of thought of the society, in my opinion, is in this direction. We may condemn Communists, but Communism in its pure form, pruned of certain things, is bound to come and would come. What does Communism mean in this aspect ? As I understand it, it means "From each man according to his ability

* C.A. (Leg.) D., Vol. II, Part II, 25th February 1949, pp. 929-34.

and to each man according to his necessity". In other words, a man is to enjoy the property in his hands to the minimum. He has to divert himself of individuality. He is never to consider that he has an exclusive individual interest in the property. If this is the basic understanding and if the world of progressive thought is moving towards this direction. I believe it would be admitted that it would be wrong to go into an opposite direction. Every effort should be made to promote such an idea and to promote such institutions as foster this idea. Dr. Ambedkar in his speech showed at length the attempts which have been made so far by the *Smritikars* and others to fritter away this idea of co-parcenership. Assuming that this is so, the effort now should have been in the opposite direction—not to complete the process of frittering but to restore the co-parcenary property.

Shri L. Krishnaswami Bharati : Impossible.

Shri V. S. Sarwate : Impossible ? Yes, everything that is not attempted is avoided by saying it is "impossible."

Nothing is impossible in this world if you try. Now therefore I submit that the idea behind the co-parcenary property system is admitted. Each individual member or co-parcener has to enjoy in full the common property, though he has no exclusive individual interest in it and he cannot alienate his interest in it. So when you attempt to deal with it, this co-parcenary you should take the idea as a whole. The idea of the joint property, as conceived by *Mitakshara,* seems to be this : that there is right of survivorship, and that each family is a unit and not an individual. It means also that the family continues though the individuals in it pass away and whether one is a male or a female one has a right of equal enjoyment. There is equality of sex in this sense. Therefore it follows that whatever is the property of the family has to go to those persons who constitute the family. Therefore if a daughter does not constitute the family, if she is the member of another family, she would necessarily not enjoy any right in that family. It is not neglect or unfairness or want of affection for a daughter. The very idea of a joint family is this : that whosoever is the member, whether widow, male or female, as long as he or she continues to be member of the family, he or she enjoys the property of the family which nobody has a right to alienate. I would have welcomed a provision to the effect that there would he no partition of joint family property and that no person or individual of the joint family has any right to alienate the family property. That would have

been very welcome and in the right direction. That would have been according to the idea which is fundamentally behind the joint family system. It is the family which is taken as a unit of society and not an individual. Conceived from this point of view, no sister of mine need think that she has been ill treated, because she and her brother enjoy equal rights in this respect. I would therefore submit for the consideration of the Honourable Dr. Ambedkar that in such a vast country like India, nothing would be lost if there are separate experiments on social units. If it is wanted that a individual should be a unit, let that experiment be tried somewhere. If the joint family should be the unit of society let that experiment also be continued in some places. We are a sufficiently large country to have different experiments in society. Let both continue and let the persons choose the law or system they want to follow. So, instead of having one codified uniform law for the 20 crores of India, nothing would be lost if we have more than one system prevailing in this country.

I may in this connection refer to one of the observations made by Dr. Ambedkar. I admire him for his erudition. I heard him with respect, because in the cause of his arguments he never descended to have a fling at somebody. His attacks were heavy, but they were straight and level. But, in the course of his remarks the other day, in the course of his otherwise lucid speech, he said that he did not know why the Brahmans of old were engaged in comprising so many as 137 *Smritis* and enquired whether they had no better engagement. I believe when the Honourable Minister said this, his historical perspective left him for a moment. I may remind him that these 137 *Smritis* were not written simultaneously. They were written in a period covering more than 250 years at the least. Thus on the average it took them about 20 years to write each *Smriti*. That means one for every generation. But here what happens is that during the space of one year the Honourable Doctor prepares more *Smritis* than one. So he need not have indulged in that unedifying observation. It was also very unnecessary for the development of his argument.

Sir, I was dealing with joint family property. I submit that the basic principle of joint family property is this : that it allows restricted enjoyment.

Sir, the question is often asked, what is Hindu culture; what is Hindu religion as such ? Where angels fear to trend it is difficult for others like me to rush. All the same one has sometimes to make

provisional attempts and I shall make that attempt. I think, as far as the present topic is concerned, the fundamental points which the Hindus have kept before themselves are that there should be restraint on enjoyment all along. Not encouragement of enjoyment but restraint on enjoyment was their rule and according to them, for the community of interest, the individual should lose himself.

Now, applying this principle of restraint, I submit that the whole Chapter on Marriage has to be recast. In this respect it has been stated that because ninety per cent, of the people by custom have this right of divorce, what are you going to do ? It is asked, are you going to impose this custom of ninety per cent, on the remaining ten percent ? I submit an argument of this sort is a very good piece of rhetoric, but not of logic. What we have to consider and what the Honourable Doctor has to consider is not what is the custom, but what is good and what is beneficial. We have to consider what ought to be there. That has been the criterion all along and that should be the criterion. There will otherwise be anomaly. For instance, among ninety per cent. of the people there is the custom of drinking. We are certainly not for the matter of that prohibiting prohibition. It cannot be denied that there is the custom of drinking.

The Honourable Dr. B. R. Ambedkar: It is not a custom.

Shri V. S. Sarwate : All right, you may think so. I am at liberty to express the thinking in that way. (*An honourable Member*;: "There are not ninety per cent, drunkards.") It is one think to call it a custom in the community and another thing to call them drunkards. That is the difference. It is no argument to say that a certain custom is there and therefore it should be continued by law. The argument should be whether it is beneficial and if we consider from this point of view, and if a certain section of the Hindu community says that marriage is indissoluble, why force them and say that there shall be a dissolution, if the parties so choose ? Argument may be advanced, that there is in this Bill no necessity, there is no compulsion, but there is an option. The option is always there. The option to a drunkard is he may or he may not go to the drinking shop. There is always the option, but he does go all the same when there is a drinking shop and a drinking shop has therefore to be closed by law. If it is to apply to a certain portion of the society, I would have welcomed it. In law of marriage, there should be monogamy. I admit it. I would go further and say that if you consider that from the point of view of restraint, there

should be no second marriage either of the women or of the men. That would have been a welcome provision, but instead of that we are going to the other extreme and providing that every marriage should be, if so chosen, liable to be dissolved. This is not desirable to my mind. No doubt Divorce was allowed by ancient Hindus at a certain point of time. It was prohibited later on whatever may have been the historical condition first. The reason appears to me is this that the unity of the family was to be kept intact. They wanted that the marriage once performed should not be dissolved so that no other woman should come in ; and that the woman who was in the family should not go away and another should not come in. That contingency should be avoided as far as possible. To my mind this was one of the reasons why a marriage was not allowed to be dissolve. Therefore, my suggestion is this: Let there be two parts in the section of' marriage. Those who want that their marriages should be dissolved, let them marry according to civil marriage and let there be free dissolution of marriage for them according to the provisions which you make here. Let the other part be there, which may be sacramental, and in that part let there be no dissolution of marriage. This would, I think, satisfy both the parties. My humble submission is this: Why should dissolution be forced ?

Shri Mahavir Tyagi : In that case they will have to decide for separation before they marry.

Shri V. S. Sarwate: I believe my honourable friend has misunderstood me totally. What I say is that those males and females who want that their marriages should not be dissolved should marry according to the sacramental rights and those who wish that their marriages should in future be dissolved let them marry according to civil marriage.

Mr. Tajamul Husain : Does my honourable friend mean that there should be divorce before the marriage ?

Shri V. S. Sarwate: Civil marriage does not mean divorce. It neither means separation nor divorce. When I say civil marriage, it means marriage; it cannot mean divorce.

Shri Mahavir Tyagi : It does not mean even marriage.

Mr. Chairman : Order, order. Let the honourable member proceed with his speech.

Shri V. S. Sarwate : My submission, Sir, is this : Let us get clear in our minds whether we are going to force certain things which certain

sections of the people do not want ? I go further and say when you once admit that sacramental marriages are sacramental, then let religion be the test for providing the conditions for such a marriage. If religion allows child-marriage and marriages of minors, let it be allowed. It is a contradiction in terms first" to say that a marriage should be according to religion and then to add that it shall be according to religion and also according to what is provided in this Bill. That is contradiction in terms. Either allow sacramental marriages or do not allow sacramental marriages, if you do not like that. In that case, say that all marriages will be civil. If you say sacramental marriage is to be allowed, then the marriage has to be performed according to the sacraments. This is my humble contention and in so far as the provisions of section 7 of the Bill are concerned, they are not according to sacraments. There are certain other things added to sacrament. That should be strictly according to the religion, if religion is to be allowed. This is the second thing which I bring to your notice and this can be very easily done. This would satisfy and may to a great extent remove the causes of dis-satisfaction which at present exist. Dealing with principles only, my simple suggestion is this, that in this very Act there should be provision which should allow society, and the joint family in co-parcenery form to continue. Nothing would be lost thereby. In this country there are Muslims, there are Christians, there are Parsis—Parsis are a very small community—and still if they are allowed to have their own law of succession etc. what would be lost if a certain larger section is allowed to have co-parcenery, if they so chose. If this principle is once accepted then changes can be made in the whole draft according to that principle.

My further submission is that the Bill may be re-circulated for opinion. Here I do not touch on the ruling which has been already given by the Chair. The question that then arose was whether for purposes of the rules publication was sufficient and the ruling was that it was sufficient. That does not however preclude me from raising the point whether it is desirable that the Bill should be re-circulated. My submission is that it has been lost sight of that the Bill if passed would be automatically applicable to States whatever Dr. Ambedkar may say to the contrary. My humble opinion is that it would apply to all those territories of states which have merged in the provinces and all those areas which have agreed that the Centre would have the power to legislate for them.

Shri Sita Ram S. Jajoo (Madhya Bharat): What is the objection if it applies to Indian States as well ?

Shri V. S. Sarwate : What I am saying is that it should apply. I am in favour of it. I do not understand, why honourable members without allowing me to speak, go on anticipating me and pass certain remarks. I was submitting that the Bill should apply to the Indian States. I was only submitting that if it is to so apply and that is very much my wish, then there arises a fundamental right, which you ought in justice grant to every large area which is to be governed by your bill, to express its opinion. This Bill was not published in these large areas and therefore the peoples there were not in a position to give to the Bill that serious consideration which they would otherwise have given. Now when they know that the Bill would apply to them, and the Bill is published they would be in a position to express their reaction. It is a fundamental right of every person to be given an opportunity to express his opinion regarding any legislation which is going to effect him. It is further the duty of every representative of theirs to ascertain their views before he gives his vote here. Therefore, both from the point of view of the representatives of the States and from the point of view of the people of the States, it is only just that some time should be allowed to them to give their opinion. Therefore, I suggest a *via media,* that if in any case this Bill is not going to be finished in this session, if that be the contingency, which I think it may be, the honourable the mover of the Bill may consider whether it would not be desirable to take this up in a special session later on ; the time that may intervene, namely two or three or four months would be quite sufficient to get the reactions of those people. I think this would be just and would also be in accordance with the spirit of the publication provisions. I appeal to the House to see whether justice does not require this. It should not be presumed that the last word has said been on the Code. It may be that the humblest of the humble may come forward with suggestions which may be useful to the learned Doctor. If opportunity is thus given, it would both satisfy the ends of justice and may be useful also.

With this appeal, I have finished, Sir.

Shri H. V. Kamath : Mr Chairman.....

Shri B. Das (Orissa: General): On a point of order, Sir, can a bachelor, who has not married and has not begotten a son too offer *pind* to his forefathers, make, a speech on this Bill and contribute to the discussion ?

Mr. Chairman : There is no point of order in this, as long as he is a Hindu, he can speak.

* **Shri H. V. Kamath :** I shall also answer the point of order. Sir, rising, as I do, after two lawyer friends and a woman friend, I fear I am labouring under a handicap. I have neither the legal argument of my honourable friends Pandit Thakur Das Bhargava and Mr. Sarwate, nor the sweet reasonableness of my honourable friend Shrimati Renuka Ray. As far as the lawyers are concerned. I am sure that my honourable friend the Law Minister will take care of them and will reply to the arguments that they have raised in the course of their speeches today. As regards Shrimati Renuka Ray, I am broadly in agreement with her and so there is no need for me to take up any of her arguments with a view to counter them.

My honourable friend Mr. B. Das raised a point of order when I stood up. That very point of order, I think, goes in my favour. I feel that my only claim to speak on this measure before the House is that because I have neither a wife nor children nor property worth the name, I can bring to bear a dispassionate mind to bear on this subject, unswayed by emotions of the heart. Most of the provisions of this Bill relate to marriage and property, adoption and succession, provisions regarding matters which could be summed up in two words of most of our philosophers, namely, *kamini* and *kanchan.* Not having been so far encumbered with either, I hope I will have your indulgence and the indulgence of the House in making a few remarks on this Bill in a more or less disinterested manner, not uninterested, but disinterested manner.

This century, the 20th Century after Christ has, as we all know witnessed the emergence of women upon the stage of history, in Asia, as well as in Europe and America. India and our Hindu society have been no exception to this world movement. Fatefully interlocked with all the revolutionary upheavals which in our own time have been ripping open and transforming old societies inherited from the nineteenth century and its long past are the relations between men and women. Our age has been marked by the dynamism of women who, with men, have set the world on fire. (*An honourable Member:* "But you are an exception.") and have also helped to frame plans for the world's reconstruction. Breathes there, I ask, a man with soul

*C.A. (Leg.) D., Vol. II, Part II, 25th February .1949, pp. 934-36.

so dead, who does not recall with pride, and a certain elation of the heart, the remarkable and heroic achievements of women—aye, poor, ignorant illiterate women—on the field of *non-violent* battle called Satyagraha, and ever on that more sanguinary Held of battle, of blood and iron, of fire and steel. The hand that rocks the cradle has shown itself strong enough to wield the sword and gentle enough when necessary to raise itself in benediction against the aggressor. Leaving aside other lands and other climes, in our own India, we all know how women, along with men, though quite ignorant of modern warfare and though quite uninured to the *lathi,* the bullet and the prison, how they have flocked in thousands to the banner of Mahatma Gandhi and Netaji Subhas Chandra Bose. This story is too well known, for me to recount at any length. It is in this context of fast developing social and economic change that we have to view the measure that has been brought before the House. For, no law can function or can be made in a vacuum and no law can be divorced or viewed apart from the social milieu in which it has had its birth. In short, this age can be summed up in the facetious remark of a wag who said that today, women sit in Parliament and stand in buses. This in a nutshell, is the revolutionary change that has overtaken the present age, Sir, I feel that I am more or less a political Parivrajaka परिव्राजक and I set forth a few obsrvation on this Bill.

I am glad that my honourable friends in this House who are not immediately affected by this measure have taken such great interest in this Bill. My honourable friend, the redoubtable Pandit Naziruddin— I feel, Sir, that the title is not entirely unreserved. If, Sir, Mountbatten could be called a "Pandit" on the 15th August 1947, I feel that Mr. Naziruddin has a greater claim to be called a "Pandit" than Lord Mountbatten of Burma. Many such friends have been taking an interest in this measure and I welcome it as a happy sign of the times and a good augury for the future, for thus we are going in the right way of being one unified society, and ere long we will have one uniform civil code for the whole of our country.

Those Members, within and without the House who are not wholly in favour of the Bill and who do not want to go the whole-hog in this regard, take their stand at least some of them—on the *Smritis,* the *Shastras* and our Dharma. Well, Sir, what is Dharma ? Unless we decide that question we cannot appreciate or reject the stand that some people in this country are taking with regard to this measure. Dharma ! Is it merely a code of ritual and externals and ceremonies,

or is it something deeper, that pertains to the soul, the heart, the mind and the spirit ? Dharma !The etymology of this word in Sanskrit is— Dharma is that by which the world is supported, *yenedam dharyate jagat.* That by which the world—"Jagat"—is supported is Dharma.

Now are we not to ask whether the observance of a few ceremonies, rituals, and formal conventions constitute Dharma, or whether it is something deeper ?

As regards the *Smritis* which are interlinked or interlocked with Dharma, my honourable friend Dr. Ambedkar said the other day that there are perhaps 137 *Smritis.* If I am wrong he will correct me. I believe he has counted them. Of the *Upanishads* it is stated there are 108 and so many other unknown and unearthed *Upanishads.* There may also be many more *Smritis* unknown and unearthed. Of the *Smritis* known to Dr. Ambedkar there are 137. And now we have got the 138th *Smritis.* He will pardon me if I refer to this, not in a light-hearted fashion, because this is also a measure, which although not revolutionary, has introduced changes in our Hindu social relations. So I can apply the same term as has been applied to the other Hindu social codes and social texts that have been already written for us. This we may call the 138th *Smriti.* I may call it the Bhim *Smriti.* I hope Dr. Ambedkar will pardon me if I refer to this as the Bhim *Smriti.* If I have got to include the name of the other protagonist of the movement, which has culminated in the drafting and the presentation of this Bill, I would refer to it as the Narasimha. It is the Rau Committee which has led to this Bill. Ultimately I will not refer to it as the Bhim *Smriti* but the Bhim Narasimha *Smriti.*

Coming to the measure before us : though the *Smritis* are well-known, still they differ among themselves. The same *Smritikara* at times differs in different texts of the Smriti. It is very well known that even a poet is not consistent in his poetry. Shakespeare referred to women in one play as "Frailty, thy name is woman" : in other play he goes on to describe a woman who was strong enough to inflict wounds in her own thigh : I mean Portia of Brutus ! Coming to our own country, the great poet and philosopher, Tulsidas has said: *dhor ganwar Shudra aru nari yah sab tadana ke adhikari.* For the benefit of my friends who do not know Hindi, it means that a rustic, an illiterate man, an animal, a shudra and a woman—these all deserve a beating.

Shri Raj Bahadur (United States of Matsya): I would inform the House that the interpretation put by Mr. Kamath upon this well known cuplet is absolutely incorrect.

Shri H. V. Kamath : I hope my friend will give us his interpretation when he has to speak.

Shri Raja Bahadur: It means that a Shudra who is like a *Dhol* or is uncivil and a "*nari*" (i.e. woman) who is like a pashu (beast) deserve admonition. It means that *Dhol,* (hollow) Shudra pasu, (beastly woman) deserve chastisement.

Shri H. V. Kamath : But our law-giver Manu says : *yatra naryastu pujyante ramante tatra devatah.*

It means that where women are respected, there the gods are happy.

Leaving aside the various *Smritis* and the *Shastras,* what does our own—the greatest *Shastra* to the Hindu—says? At the time when the *Gita* was preached by Srikrishna to Arjuna, there were so many customs among the Hindus which were derogatory to certain sections of the people that Srikrishna categorically told Arjuna in one of the well known texts on the highest goal of any human being :

Mr. Chairman : The honourable member can continue his speech on Monday.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday the 28th February, 1949.

*HINDU MARRIAGES VALIDITY BILL

EXTENSION OF TIME FOR PRESENTATION OF REPORT OF SELECT COMMITTEE

Pandit Thakur Das Bhargava (East Punjab : General): I move:

> "That the time appointed for the presentation of the Report of the Select Committee on the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be extended upto the 25th March, 1949."

The date given here on the order paper is 11th March, but with your permission I would like to amend it to 25th March as the honourable the Law Minister will be out of Delhi and he will not be able to devote much time to it. Therefore I move the motion with this amendment.

I want to say that I am very anxious that this Bill may be put before this House this session and therefore I request the honourable the Law Minister and the authorities in charge of this Bill to kindly see that the Select Committee makes its Report by the 25th March. I also beg the House to supplement my request to the authorities so that, as the Bill is a very important one, it may be passed this session.

Shri R. K. Sidhva (C. P. and Berar : General): The matter is entirely in the hands of the Select Committee. What has the House to do in this ? My honourable Friend should request the Select Committee to expedite the Report and I think they will be pleased to do it.

Pandit Thakur Das Bhargava : I want an extension of the date. I want to urge that it is my anxiety that the Law Minister should see that the report is made in time and the House should support me in this.

Mr. Chairman : The question is :

> "That the time appointed for the presentation of the Report of the Select Committee on the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be extended upto the 25th March, 1949."

The motion was adopted.

* HINDU CODE—*contd.*

Mr. Chairman : The House will now proceed with the further consideration of the Hindu Code.

†Shri H. V. Kamath (C. P. and Berar : General): Mr. Chairman, when this House adjourned on Friday afternoon the name of Shri Krishna was on my lips. I was saying that even so far as the highest goal of human existance is concerned man and woman have been placed on an absolute footing of equality by Shri Krishna in the *Gita.* The *Gita* to the Hindus is the sacred *smriti,* the supreme *shastra,* the

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* C.A. (Leg.) D., Vol. II, Part II, 28th February 1949, pp. 940-56

†*Ibid,* pp. 941-50.

quintessence of all philosophy and all religion. In that, very well-known verse, Shri Krishna says—

"Streeyo vaishyastatha sudrastepi yanti paramgatim."

Women, Vaishyas and the *Shudras* who were apparently the down trodden and the suppressed classes or castes of that age, even they— Krishna says— are on a par, on a footing of equality, with Brahmana and the others.

Shri L. Krishnaswami Bharati (Madras : General): You are right, Mr. Kamath.

Shri H. V. Kamath : So far as *moksha* and the *paragati* are concerned, there is absolutely no bar to the attainment of the same by women. I am sorry that at the present day there are some men, and even certain *swamis*— so called religious or spiritual heads—who believe that man and woman should be placed on an unequal footing. I agree that they are not identical in all respects.....

Maulana Hasrat Mohani (U. P.: General): How are they equal ?

Shri H. V. Kamath : But to say that they are unequal and to buttress that argument by fantastic reasons is to my mind shocking. The other day I had the good-luck—or the ill-luck—of listening to a *swami* saying that man and woman are unequal. And, pray, what were the reasons for that statement ? He said fantastic, the House will agree—he said that man grows a moustache and woman does not. I am not joking, Sir, many of my friends were present at the meeting which the *swami* addresed, and he said it in all earnestness, in all seriousness, that man grows a moustache, woman cannot grow a moustache, and the woman at most can bear three, four or five children in a year.

An Honourable Member: In a year?

Shri H. V. Kamath : Depending upon whether she produces triplets, quadruplets or quintuplets. Sir, he went on to say that man, however is potentially capable of being the father of a hundred or more children. This, Sir, to my mind is a fantastic argument.

When we talk of equality of man and woman, we regard that on a spiritual basis which has been envisaged again by Shri Krishna in the Gita. He says:

"Sarvabhutasthamatmanam sarvabhutani chatmani"

That is the basis, that is the yardstick, that is the measuring rod for equality of human beings or between man and woman.

"*Yo mam pashyati sarvatra*

sarvam cha mayi pashyati."

This is the test, this is the criterion, this is the standard, this is the yardstick for equality of human beings, whether high or low, rich or poor, man or woman.

Well, Sir, I do not subscribe to that notion of inequality propounded by the *Swami* On the other hand, I also do not believe that woman— as some of them do today—attain equality with men by taking to smoking and drinking. That again. Sir, is something which is to be deprecated if by that they seek equality with man. Nor do I subscribe to the progressive conception of woman—progressive in the Western sense—who, perhaps in imitation of the West and so trying to be progrsssive, take to ball-room dancing and other Western habits. This, Sir, is also to my mind no way of securing equality with man.

Shrimati Purnima Banerjee (U. P.: General): It is not included in the Hindu Code. Does she dance alone without a partner?

Shri H. V. Kumuth : I know that but we are talking of the equality of man and woman. And here, Sir, our great savant and philosopher, Dr. Sarvapalli Radhakrishnan who is an authority on Hindu *dharma* and Hindu way of life, says :

"The modern woman, if I may say so, is losing her self-re sped. She does not respect her own individuality and uniqueness, but is paying an unconscious tribute to man by trying to imitate him. She is fast becoming masculine and mechanical.

Shri R. K. Sidhva (C. P. and Derar: General): What about the modern man ?

Shri H. V. Kamath : I hope, Sir, our women will take this to heart and will not undertake such attempts at equality with man.

Shreemati Annie Masearene (Travancore State): May I ask the question whether modern man is in any way better than that ?

Shri H. V. Kamath : That is for women to answer.

Well, Sir, when I therefore talk of equality between men and women I have before me the historical examples of Sita, Savitri, Damayanti, Gargi, Maitreyi and Ubhayabharati. Will you permit me to read from our own ancient hisiory about these women and the place these women occupied in our ancient Vedic times and even later, on which so many of our opponents to the Hindu Code depend today ? It is said that in the Vedic and Upanishadic age, women occupied a very high place in society. Among the exceptional women of Upanishadic times the name of Maitreyi stands out in bold relief. The lustre of her spiritual mind illumines the world even today. For sheer intelectual acumen two women stand out in singular brilliance. An All-India religious

conference took place—it has been the tradition in this country to have conferences of all sorts and religious conferences were not an exception—an all-India religious conference took place in the prehistoric age and another in the post-Buddhistic age. They had been summoned not for mere academic debate but for the establishment of principles that should govern the spiritual life of the nation. The former was championed by the sage Yagnavalkya, the same as our law-giver and the latter by the great Shankaraeharya. The first conference, Yagnavalkya's conference, was convened by King Janaka, the great Janaka, the *karma yogi,* when the sages assembled from all quarters of India, from Kashmir to Kanya Kumari and I suppose from Kliyber to Chcrapunji, are silenced, Gargi boldly rises on behalf of the women, championing the cause of the humiliated. That, Sir, is the ideal towards which our women ought to be progressing and which they will, I hope, attain. Ere long, Gargi is defeated, but only after putting up a tough fight.

In a second Conference, Sankara Acharya's conference, the task of presiding over this momentous meeting falls upon Mandanamishra's wife, Ubhayabharati. Now, it is very important—and I would like my women friends to mark this— that in the history of the world there is not a single instance of a woman being chosen as a judge of an important meeting and making such an exceptional demand on her intellectual ability as well as integrity. She gives—Ubhaya Bharathi— gives the verdict in favour of Shankaracharya. (*Honourable Members:* Hear, hear,.) With the result that her husband becomes a monk and a disciplie of his opponent, whose view henceforward becomes acknowledged as the paramount creed of the country. "In fact", the author says—I am reading from the" Cultural Heritage of India "published by the Ramakrishna Mission—"It is not the original authors"—mark these words 'it is not the original authors'—"with the emancipated mind of creative thinkers but the mechanically minded commentators"—Tikakars, not the *smritikars,* but those who wrote *tikas*—"who worked for the suppression of the rights of women, whom they bluntly assumed to be in league with ignorance and illusion."

Now, Sir, many of our friends who are opposing this measure,—I do not mean in the House but those who are outside-they take their stand on Dharma. The other day I posed this question, "What is Dharma?". One of the pamphlets issued by the Anti-Hindu Code Committee presumes to give us some advice, and what is that ? They

quote the old *sloke*—I do not remember exactly where it occurs— but the Panchatantra quotes it:

"*Nasasabha Yatra na Santi Vriddhah,*

vriddhnateye na vadanti dharmam."

'That is not a Sabha or Assembly where there are no vridhahs.'

An Honourable Member : But we have so many of them here !

Shri H. V. Kamath : That man is not a *vriddhah* who does not talk of Dharma. I, Sir, am sorry that our friends of this Anti-Hindu Code Committee have not exactly understood the meaning of "vriddhah"—who is a vridhah and who is not. In the Mahabharata there is a story : Saraswata Muni, a young boy of twelve, when there was famine in the country and all the old rishis who were fasting and doing penance on the shores of the Saraswati river tied for fear of their lives—they wanted to save their lives—this young boy at that time stuck to his post and his mother Saraswati, that is why Saraswati fed him on fish in the morning, fish at noon and fish at night—that is why Saraswat Brahmins even today eat fish. This Brahmin boy, inspite of the famine, stuck to his post. The story goes on to say that the famine raged for many years in the land—twelve years—but our young boy, Saraswat Muni—the progenitor of all Saraswats in the world—continued to stay. After the famine was over, the *rishis* who had fled for their lives started coming back in driblets, one after another, to the shores of the Saraswati river to resume their *tapasya* interrupted by the famine and they tried to boss over this young boy of 24. He was 12 when the famine started, and he was 24 when the famine ended. They started bossing over him. They said, "You sit at out feet; take instruction from us; learn from us; become our disciple." He said, "Fie on you. Shame on you pretend to be *munis, rishis, tapasvis,* and you fly for your lives ; fly for fear of death. You have got to sit at my feet and learn from me." Thus said the young man of 24 to those old men of 70 and 80. The Mahabharata goes on to say:

"Na tena vridho bhavati yenasya palitam shirah

yo vai yuvapyadhyanastam devah sthaviram viduh."

(A man is not a *vridha* merely by virtue of his grey hair. Even a youth who has studied well is called a wise man by the gods.) That man is *vriddhah* who has attained *vriddhi* Actually the word "*vriddhah"* is wrongly translated as old. It means that man who has

attained *vriddhi*, you call it, wisdom, growth, development—that is *vridhi*..... Here our friends say:

"Na sa sabha yatra na santi vriddhah—

Vriddha na te ye na vadanti dharmam "

I think that even in that sense of " *vriddhi*" or wisdom, there are a number of my friends here who will live up to that standard. But my friends have stopped short of quoting the whole *shloka.* They start by saying :

"Na sa sabha yatra na santi vridhah

Vriddha na te ye na vadanti dharmam."

But what is Dharam ? The sloka goes on to say later on what is *Dharma.* These fellows conveniently omit that portion of the sloka. The sloka goes on to say:

" Dharmah sa na yatra na satyamasti "

That is not *Dharma* where there is no *satya.* Therefore, my quarrel with those who take their stand on *dharma* is that they have not understood what is Hindu *Dharma.*

I will again crave your indulgence to tell the House what our great savant and philosopher, Dr. Sarvapalli Radhakrishnan has to say on the subject, especially Hindu Dharma. He tells us:

> "There has been no such thing as a uniform stationary, unalterable Hinduism whether in point of belief or practice. Hinduism is a movement; not a position ; a process, not a result; a growing tradition, not a fixed revelation. Its past history encourages us to believe that it will be found equal to any emergency that the future may throw up. whether on the field of thought or of history....."

We are happy that today the prediction is coming true. It was Swami Vivekananda who said fifty years ago that Vedanta will become the religion of humanity—the vedanta which has been given to the world by our seers, *rishis* and *munis* Radhakrishnan goes on to say:

> "We are beginning to look upon our ancient faith with fresh eyes. We feel that our society is in a condition of unstable equilibrium. There is much wood that is dead and diseased that has to be cleared away.

I hope, Sir, that most of our friends here are in their own way leaders of Hindu thought and practice, I am sure of that —

> "Leaders of Hindu thought and practice are convinced that the times require, not a surrender of the basic principles of Hinduism, but a restatement of them with special reference to the needs of a more complex and morbil social order.

"Such an attempt", he says, "will only be the repetition of a process which has occurred a number of times in the history of Hinduism. The work of readjustment is in process. Growth is slow when roots

are deep. But those who light a little candle in the darkness will help to make the whole sky aflame."

I would commend this statement of the Hindu *Dharma* to those of my friends who oppose the Bill, even the consideration of the Bill on grounds of *Dharma*. Who does not know and who does not recollect that this cry of '*Dharma* in danger' or 'Society in danger' was raised by those that wanted to block every reform of Society attempted in the past ? Is it not a fact that twenty-five years ago, when the movement against *asprisliyata* untouchability was started, some of our men, even high-class orthodox Hindus said that Hinduism was in danger, social order was in danger and that disruption of society was coming ? Yet, did we not persist in that much-needed reform ? Did we not help to accelerate the evolution of Hindu society on an egalitarian basis ? As a culmination of these attempts, have not we adopted an Article in the draft Constitution prohibiting untouchability and banning it in any shape or form ? If we could do that in spite of what the orthodox *pandits* claim for Hindu *Dharma* surely I do not see any reason why we should not proceed to legislate or provide for the regulation of social relations and personal law.

Again, Sir, honourable Members will recollect the opposition that was started against the Sarda Act, which tabooed child-marriage, on the ground that Hindu *Dharma* was in danger and that Hindu religion and Hindu society were in danger. In the last century when the custom of *sati*, cremation of the widow with her husband, was sought to be abolished, these same reactionaries who block the road to progress denounced the attempt stating that the Hindu-Dharma sanctioned *sati* and that it granted the highest salvation to women and therefore it should be continued. In spite of their agitation and obstruction, much-needed reforms like that were put through.

Pandit Thakur Das Bhargava said the other day that this Bill had not reached the rural population and that the rustics, the people in rural areas have not seen or read or considered it. He expressed anxiety to know their reactions to the Bill, before it was proceeded with in this House. When he said so, he forgot the fact that some of the Bills he himself had introduced had not been seen by the peasants of his own Hissar. I wonder if on his advice we are going to circulate copies of our Bills to every village and hamlet and homestead in the country.

Shri Mahavir *Tyagi* (U. P.: General): Peasants do not count these days.

Shri H. V. Kamath : I am astonished to hear from Mr. Tyagi that peasants do not count in these days. If they do not count, who does ?

Honourable Members: You.

Shri H. V. Kamath : **I** am indeed grateful for the compliment. I hope, Sir, in the near future, not merely I, but all my friends in the House will count equally with me.

Sir, while I have every sympathy with certain observations made by Pandit Thakurdas Bhargava, I do not think that his opposition to the Hindu Code Bill on the ground that there has been no circulation or proper publication among the people affected, can stand scrutiny. That argument is absolutely untenable. In that way, every Bill sought to be passed here, which affects the lives of millions, would have to be sent to them, in order that they may register their approval or disapproval of the same.

Now, Sir, this vexed question of equality, I hope, I have disposed of in a satisfactory manner. Sir, men and women are equal on a spiritual basis. The Gita, the Smritis and Shri Krishna himself have preached this doctrine of equality.

Coming, Sir to the question of property, property has been, according to most philosophers, political, social or otherwise, the root of almost all evil in the world. In this regard I subscribe to the proposition made by Seth Govind Das—he is not in the House now—that it would be best if private property were abolished. Even litigation will decrease a good deal if this is done. One of our greatest law-givers and statesmen of ancient times—not Manu or Yagnyavalkya—but a warrior statesman, Bheeshma Pitamaha has expounded his doctrine in two *parvus* of *Maha-Bharata,* viz., *Shanti Parva* and *Anusasanika Parva.* There he tells Yudhisthira about property: *akinchanasya shuddhasya na tulyamihia lakshyaye akinchanyamcha rajyamcha tulaya samatolayam atyarichyaia daridryam rajyadapi guradhikam nityodvignohi dhanavan mrityorasyagato yatha.* He tells Yudhisthira that his kingdom and voluntary poverty he has weighed in the balance. He says that this *akinchanya* voluntry poverty has proved more than the other. Because, he said, *nityo nilyodvignohi dhanavan mrityorasyagato yatha.* The nearest equivalent to this in English is “Uneasy lies the head that wears the crown”. If a man has property he is afraid of death.

I am in agreement with Pandit Thakur Das Bhargava when he says that a wife and husband should become one not merely in love, but in property as well. Sometimes it happens that love is their only

property. Husband and wife may have no property at all. Their only property may be their mutual love. But, Sir, we should face the stark reality of life today. It was, however, refreshing to hear Pandit Bhargava's personal experience in this respect. This world would be a happier place to live in, if men and women, husbands and wives are in the same happy position as Pandit Thakur Das Bhargava and his wife are. There are, however, hundreds of cases today where the relations between the wife and husband are not as happy as they should be, or as we wish them to be. *(Interruption)* I am speaking, Sir, from facts narrated to me by friends like my honourable friend. Mr. B. Das and I have come in possession of these facts, as told to me by my honourable friends, who have got experience in this direction.

Our Hindu Code Bill provides in this respect that a woman should be entitled to an absolute right in her property. In the Vedic ages and in the ancient ages, upon which our opponents of Dharma and the Hindu Code Bill take their stand, it was only in medieval times, when Hinduism was on the decline that women's rights to property came to be restricted—in the Vedic period the social position of women was generally high.

Mr. Chairman : There are a number of speakers, who want to speak. I appeal to the honourable Member kindly to be as short as possible.

Shri H. V. Kamath : I will try to be short, but I am afraid, the subject is so vast that it is difficult to be short.

The Honourable B. R. Ambedkar (Minister of Law): There will be plenty of occasion for Mr. Kamath to speak. There are at least 130 sections.

Shri H. V. Kamath : But I do not want to let some things remain unsaid today. Now in the Vedic period, I was saying that the social position of the women was high. An unmarried daughter was offered a share in her father's property, and the married daughter was given no interest therein, but she got ample dowry at the time of her marriage. So the argument advanced by my honourable friend, Pandit Thakur Das Bhargava, in this respect, I think, may be considered by the House and by the Honourable Minister sympathetically ; because fundamentally being opposed to property myself, I do not think that any purpose would be gained by making the property position worse than it is today. Dr. Ambedkar referred to an instance of the property of a Hindu family consisting of 12 sons and one daughter. That is very well for

him to quote that instance, but may I quote the other instance where there are 12 daughters and one son. What will happen if the Hindu Code Bill as it stands is applied in this case ? The family property will have to be divided among all the daughters and one son. The son will be left in a little corner of the house, and if the daughters get married, they have got the right to bring their husbands and they have the right to dispose of the portion of the House to a stranger. Therefore the one little son like a little mouse will creep here and there and he would not have even a comfortable cosy corner to live in.

Therefore, Sir, this question of property is a very vexed question and we might consider whether a daughter instead of getting the property herself, whether she might not be allowed an equivalent share of the property in cash or jewellery, or whatever she might choose to have, as it was done in ancient times and in Vedic times. There was no property share at the time of marriage but she was given ample dowry in leu of the share of the property.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock.

Mr. Chairman (Shri S. V. Krishnamoorthy Rao) in the Chair.

Mr. Chairman : Before we begin the debate, I would like to make a suggestion. There are about 25 names on the list. This is a very important measure and as many speakers as possible would like to give their views on the Code. Therefore, I would request honourable Members to be as brief as possible and refer only to the relevant points for or against the Bill.

Babu Ramnarayan Singh (Bihar: General): Sir, my name also may be included in the list.

Shri B. Das (Orissa : General): I did not know that I had to send in my name; I thought I would catch the eye of the Speaker.

Mr. Chairman : That is why I am telling honourable members to be as brief as possible and refer only to the salient points for or against the Bill. Members who want to speak may kindly send chits.

Mr. Tajamul Husain (Bihar : Muslim): May I know, Sir, whether my name is in the list ? I spoke to the Deputy Speaker yesterday on Friday last.

Mr. Chairman : No harm in sending a fresh slip.

Shri H. V. Kamath : Sir, before I resume the thread of my little speech, I may assure you that I shall take much less lime than my honourable friend, Pandit Thakur Das Bhargava did.

Mr. Chairman : You have already taken an hour.

Shri H. V. Kamath : I said less lime than my honourable friend Pandit Thakur Das Bhargava.

I was speaking about property: me basis for the allotment of property, was the principle which was expressed by Kanwa after he bade farewell to Shakuntala. Kanwa said:

"Artho hi kanya parakiya eva tamadya sampreshya parigrahituh jato mamayam visliadah prakamam pratyarpiiaryasa ivantaratmo."

The first line, "Artho hi kanya" does not mean, as has been literally translated, that a girl is somebody else's property. It means that a girl separates herself from the father's home when she gets married. It was on this basis that she goes into another household that in olden times. Vedic and later times, that a daughter was given no interest in the property, but ample dowry was given. Again, in the Vedic and later Smriti times, only when a father had no son, he appointed his daughter as the Putrika and such a daughter was equal to the son. This principle can very well be considered by our new law makers. They may try to incorporate the gist of this principle in the Code.

I wish agricultural property were completely excluded as it has been already excluded so far as the Governors' provinces are concerned. I refer to Part VII Chapter I. Section 94 says: "This Part shall not apply to agricultural land in Governors' Provinces;" Already, there is a cry against the fragmentation of land. We may hasten slowly in this regard so that this may not lead to further aggravation of this evil. As a matter of fact, if the entire land is nationalised, then no difficulty will arise; so long as this question is hanging fire and is not finally settled, we may decide to exclude agricultural land not merely in the Governors' provinces, but also in the Centrally administered areas from the operation of this Part.

Now, I come to the great question which has agitated humanity from the dawn of time: I mean that of marriage and divorce. On this question, the principle that we should go by, that should be accepted in legislating on this subject must be, to my mind, "Marriage should be easy, but divorce difficult." I think if this sound rule were adopted for law making, it would solve many of our troubles.

Sardar Bhopinder Singh Man (East Punjab : Sikh): In your case, marriage is more difficult than divorce.

Shri H. V. Kamath : There are always exceptions to a rule ; I suppose I am one of them.

If I may be allowed to quote a recent historic instance, der Feuhrer Herr Hitler in Germany, when he fought the election in 1932, one of his election slogans was, "a job for every German man and a husband for every German woman". This slogan brought him, I understand, millions of women's votes, when he promised a husband for every German woman. This proves to the hilt the principle that I have sought to place before you that marriage should be easy and divorce difficult. My honourable Friend Pandit Thakur Das Bhargava, the other day, while speaking on this subject retered to this and said that there are usages and customs in various parts of the country according to which divorce could be effected. There is even this simplest custom, I am told, according to which the man says 'Talak' three times and the wife is divorced. It may be that or some such custom ; I do not know; that is why I said, I am told. I personally think that divorce should not be easy. One of the modern States, Soviet Russia, at its inception in the early twenties of this century, made marriage as well as divorce equally easy. But, by experience they have learnt that family as a social unit has got to be preserved and strengthened even in a communist State and therefore now, though marriage is easy, divorce is next to impossible. I therefore think, however much I am inclined to agree with Pandit Thakur Das Bhargava that certain usages and customs must be given currency and must be kept alive, as regards divorce, I think that the procedure adopted must be very difficult, so that, the family as a social unit may be strengthend and preserved.

There is one more observation that I would like to make on this subject. There are instances, Sir, where due to certain causes, a dissolution of marriage may not be quite desirable or may not even be agreed to by one of the spouses : by the husband or by the wife. In such cases, where the wife agrees that the husband may marry another wife, herself also living in the same or another house. I do not see any reason why, in spite of the reasons mentioned here, permission should not be granted to either of the spouses to marry when the other consents, without dissolution of marriage. In Delhi, we are aware of one notability who has got several wives living at the same time, though perhaps in different houses.

An Honourable Member : Who is that ?

Shri H. V. Kamath : No names here please.

Mr. Tajamul Husain : I have not been able to understand ; does my honourable friend agree with polyandry ?

Shri H. V. Kamath : I will only say that

Mr. Tajamul Hussain : Only an unmarried man can say so.

Shri H. V. Kamath : Sometimes, where a couple has been married for a long time, the Hindu mind cannot reconcile itself to the breaking of marriage ties with the wife even though the purpose of marriage is being frustrated. Therefore from the standpoint of love and humanity the new Code should provide, in my mind that on such an occasion a husband can get permission from his wife to marry another wife, and if she consents then the Court should not stand in the way. But the ideal of marriage as has been stated by Pandit Thakurdas Bhargava should be one in property and love. I shall go further and say that there should be two minds with but a single thought, two hearts that beat as one.

Shrimati Hansa Mehta (Bombay: General): In Polygamy there will be more than two hearts.

Shri H. V. Kamath : I am not against polyandry if the husband does not mind it.

Shrimati Purnima Banarjee : Very liberal !

Shri H. V. Kamath : I take my stand on the principle of equality and I go to the extreme limit for both man and woman. It has been a regretable incident or development of our history—our long and ancient Hindu history—that whatever rights women enjoyed in the early Aryan Age—the Vedic, Upanishad and Smriti age—these rights fell into disuse and were not given effect to in the later medieval age. I hope that this Code will so work that women, whose paradise was lost in the dark medieval age, paradise they will regain in the modern age.

I have received a little warning from a friend outside, telling me in the name of God, in the name of Mahatma Gandhi, the Father of the Nation, in the name of Netaji Subhas Chandra Bose, please do not vote for this Bill. That very argument, I think, very well applies to a vote in favour of the Bill. I can say .....

Shri B. L. Sondhi (East Punjab: General): Is mat friend male or female ?

Shri H. V. Kamath : I can say, I make bold to say that in the name of God who has created man and woman equal; in the name of the Mahatma, the Father of the Nation, who stood for the complete equality of man and woman; in the name of Netaji Subhas Chandra Bose, who sought and accomplished the complete emancipation of man and woman to the extent of calling women to battle if need be ; in the name of God, in the name of Gandhi, in the name of Subhas, I think this Bill is a forward measure which will lead to the greater glory of Hindu society.

I have only one more remark to make. My honourable Friend, Dr. Ambedkar, said the other day in his peroration that either repair betimes or perish. We have to repair. Indeed we are repairing. I think the time has well-nigh come when, if we do not repair, then society will be rent in twain. A stitch in time will always save nine : otherwise the rent will grow more and more till society will be rent in twain.

I began, Sir, on Friday, the day before *Maha Shivaratri* and I am closing my brief remarks on the day after *Maha Shivaratri.* This day is sacred to the memory of one of the great women of the age—Mahasati Ma Kasturba and it is sacred to the memory of another great man—Swami Dayananda Saraswati. I hope their sprits—the spirits of Ma Kasturba and Swami Dayananda Saraswati—will inspire us in our work and help us in our difficult task. It is my hope and prayer to God that man and woman may travel together as pilgrims of life, dedicating themselves and consecreating their lives to the achievement of *artha* and *kama,* the *artha* and *kama* which are rooted in *Dharma and which lead to the goal of moksha,* the liberation from bondage, the goal of the Living God, in whom we live and move and have our being, and in whom all men, all women, all Creation, are equal, free and divine.

हरिओऽम् तत्सत् । ब्रह्मार्पणमस्तु

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I point out that I am getting more and more like an anachronism. 'I have undertaken the task of opposing the original motion but I have not spoken up till now. It may be that the proper time I will be squeezed out. There are too many speakers to come. To-morrow at four o'clock I understand the closure motion will be put.

Mr. Chairman : It is impossible to squeeze out Mr. Naziruddin Ahmad. The honourable Member will have a chance. Mr. Jhunjhunwala.

Shri B. P. Jhunjhunwala (Bihar : General): I would like to speak at another time.

Shri L. Krishnaswami Bharati : He either speaks now or he does not. According to the rules, if a Member is asked to speak, he must speak; otherwise he looses the chance to speak on the subject.

Mr. Chairman : Babu Ramnarayan Singh.

Babu Ramnarayan Singh : I thank you, Mr. Chairman for the opportunity you have so kindly given me today to do my part to oppose the obnoxious measure which has come on the floor of the House for discussion. Sir, at the outset I must tell the house that I am not an orthodox man.

The Honourable Dr. B. R. Ambedkar : You are not orthodox. I know you are not

***Babu Ramnarayan Singh** : I am one of those who wants that all that is old must be broken without delay. But everything must be done with wisdom. When a thing is to be done, wisdom demands that we should judge when it is to be done and how it is to be done. I tell my honourable Friend Dr. Ambedkar that I am one of his admirers. I feel that he is the pride of the country : he is my pride also. But I do not understand why such a learned man is engaged in such a useless and pernicious job. Sir, this is a government measure. I do not know what they understand by law. Law is nothing but the will of the people expressed in terms of law. I am sorry that the Government does not understand what is law. I say that a majority of the people of this country feel that this measure should not have come on the floor of this House.....

An Honourable Member : No.

Babu Ramnarayan Singh : Take a plebiscite and you will find it.

Shri L. Krishnaswami Bharati : We are here representing them.

Babu Ramnarayan Singh : Apparently it appears that there is a measure called the Hindu Code Bill and a discussion is going on in this House but in fact a conspiracy is being hatched to disrupt the Hindu society. I feel that it is something like a preparation to invade the Hindu society. Nobody can say how long this Hindu Society has lived and flourished in this would. I can say that since the very creation of the world, since the creation of the sun and the moon, since the very creation of the human race the Hindu society has lived and flourished and during all these periods there have been innumerable invasions of all descriptions against this Hindu society, Buddha came

* C.A. (Leg) D., Vol. II, Part II, 28th February 1949, pp. 950-53.

first. At one time it looked that Hindu Society would be no more but the world Guru Sankaracharya came and exported Buddhism from this country and re-established the Hindu society. Then Islam came. That was also an invasion like Buddhism but it was also a military one but I must say that Islam also failed in this country . . . .

Dr. Mono Mohan Das (West Bengal): Islam has become the Saviour and you have taken the protection of Islam.

Babu Ramnarayan Singh : Islam could not become the saviour but Islam too failed in this country. According to Islam there is no caste system in the Koran but some sort of caste system developed among those who followed Islam. In the same way Jainism, Sikhism all came in and originally they were all invasions against Hinduism but in course of time they became tolerant and tried to develop and flourish side by side with the Hindu society and religion. This time this is also a sort of invasion but this invasion is a democratic one, though the force behind it, is a dictatorial one.

Some of my friends have already said that there has been a discussion in this House as regards the authority of this house to enact this measure. It is true and I feel confident that this House is not competent to enact a measure of this kind. This is not a Constituent Assembly even ....

An Honourable Member: What is it ?

Babu Ramanarayan Singh: It is a part of the constituent assembly. A large number of members of this House either by order or by convention have been asked not to attend this Assembly ....

Shri L. Krishnaswami Bharathi: With that the House is not directly concerned. The Speaker has already said that that is not a matter for the House.

Babu Ramnarayan Singh : Whatever may be the ruling of the Speaker I am not talking against that. I bow to the ruling of the Speaker but I am bound to speak for the world about the competency or authority of this House to anact this measure. The mandate of the country to the Assembly is to frame the constitution of the country. But so long as that constitution is not complete or has not come into force the Government must go on. It was by a hotchpotch agreement with the foreign rulers that this arrangement had been arrived at in order to pass the budget and any other important legislation necessary for the administration of the country. But such a measure like this against

which there is a lot of hue and cry throughout this country should not have come before this House for discussion or enactment.

When I hear in this house as well as outside the cry about the equality of woman with man I fail to understand it . . . .

Mr. Tajamul Husain: May I ask the honourable Member why he accepted membership on the Committee when he is opposed to the constitution of this very honourable house.

Babu Ramnarayan Singh : There are many people who are confounded. The measure was sent to the Select Committee. This means that the House accepted the principle of the measure but this does not mean that every member has accepted the measure or accepted the principle of the measure. There are so many principles involved in this measure that so far as the house is concerned nobody can say that it has accepted anything and everything . . .

Shri L. Krishnaswami Bharathi: If it was sent to the Select Committee, it means that it accepts the principle.

Babu Ramnarayan Singh: I was talking about the equality of man and woman. According to our Shastras man is not complete; nor is woman complete. According to our Shastras woman is called Ardhangi and even so man is not complete . . .

An Honourable Member: What is man called ?

Babu Ramnarayan Singh : Man is also half. I may tell you ....

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, it is impossible to speak in the house when an honourable member addresses it on an important measure like this there are innumerable criticism, and running commentaries, and laughter going on simultaneolusly. It is not in the interest of the dignity of the House. Members who do not like the speech may at least keep quiet so that those who want to listen may at least listen.

Mr. Chairman : Honourable members will kindly allow the speaker to proceed.

Babu Ramnarayan Singh : Sir, I thank my honourable friend Pandit Maitra for the encouragement he has given me. I was talking about equality. So far as the purposes of the world are concerned and so far as the continuity of the human race is concerned there

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is no question of equality or inequality between man and woman. Nobody can compare the hand with the feet, whether the hand is more useful or the feet are more useful, whether this eye

is more useful or that eye. Man and woman are one and nothing more than one. As regards law I tell my sisters throughout the country that law cannot help them. What can help everybody and also the womenfolk is love and nothing but love. Love between the pair is the only thing which can make the pair happy. Well, they may get the right of divorce. One woman may be divorced today ; other women may be coming for—marriage the next day. Monogamy may mean many-gamy; you won't allow a man to marry a second wife. The first wife will be divorced and he will marry the second day. The third day he will divorce that wife also and on the fourth day he will marry again. The process will continue. So far as pure love is concerned for that I think character of the people is most important. We must realize that in this country the people lost their character first and then anything afterwards. So, whatever we have to do in this matter we have to regain our character. As I say that the importance of hand cannot be compared with the importance of feet, so the importance of man cannot be compared with the importance of woman. I can rather say one thing. According to our *shastra* they are the goddess Lakshmi—Women are called in our society *Lokshmi, Saraswati, Grihalakshmi.* They are anything and everything. If I may compare man with woman. I can say woman is much more important in the world than man. I can explain this further. If we remove or kill all men from the world the world will still go on. (*An honourable Member:* 'Except one man.') Not even one man. I say if all the men in the world be killed, the world will still continue and the human race will continue. (*Honourable Members.* 'Question'). I can explain it. There are my friends who question my statement. Well, Sir, if you kill all men today there will be millions of men in the womb of the women. Women are therefore certainly more important so far as the world is concerned. But those who talk of equality between man and woman want really to separate woman from man. Instead of helping the pair to be happy they are really destructive. As I say their importance is there; they are the *Lakshmi.* But at the same time it is very difficult to compare man with woman. Nature has created man and woman. Their tasks are different, their duties are different and their functions are different. What is the use of comparing the two? No comparison can really stand in this case.

My friends have talked about the provisions of the Bill. I shall touch only one or two points as regards the daughter's share in the

father's property. First of all I was a son, then a brother, then a husband and then a father and so on. Not without exception, I cannot say, but I say that almost every Hindu father—I am also a Hindu father and I also have married my daughters here and there—every Hindu father is anxious to marry his daughter in a family which is superior in status, in wealth and in many other things to his own family. Now there is a talk of share of the daughter in the father's property. There have been jokes also. The daughter is respected in every way and is also given a share—you may call it a share—in the father's property by way of dowry and so on and so forth. When the question of share comes what will happen is this. Ordinarily if you come to my place as a guest I may show you hospitality as my friend or this and that but if you come by way of right I do not think you will receive any hospitality from me. I tell my friends that law will not help anybody, as soon as the right for the daughter will be created in the father's property I think all question of love will go. My friend Mr. Kamath—although he suggested many things with which I do not agree—said one thing. Here is a family in which a man has got one daughter and two or three sons. The daughter will be married several miles away. The property may be small and after the marriage when the son-in-law, the *damad,* will be coming to his father-in-law's place for share of the property, or as a share-holder, he will not be respected. Everything should develop in a proper manner and in a natural way. If this measure is enacted there may be a lot of complications and litigations and the principle of pure love will be killed in our society.

I, therefore, appeal to every Member in this House to consider the matter in a calm and quiet manner. As it has been suggested from several quarter in the House and as I also said before, this House is not competent to enact the measure. How is it that they are so very anxious that this measure may be passed today? Why have not the courage to wait for a year or two? May I say they are afraid of the new elections?

Shri L. Krishnaswami Bharathi: No; not at all.

Babu Ramnarayan Singh : The Hindu society has lived and flourished so long according to the same customs and same everything else, then, heavens will not fall if we send the measure for circulation as my friend Mr. Naziruddin has stated. I appeal to each and every Member of the House to consider the measure in a calm manner. People may be afraid of the next elections, that we Congress people may

not get votes. That question does not arise. We must be true to ourselves and to the constituency and people who have sent us.

So, I oppose this measure with all the emphasis at my command, and support the motion of my friend 'Pandit' Naziruddin Ahmad that the Bill may be circulated for public opinion.

*__Shri H. Siddaveerappa (Mysore State) :__ I congratulate the Honourable the Law Minister for the very lucid expression of the speech he gave while moving this Motion. Sir, a lot has been said that this measure vitally affects the Hindu society. I come from a part of this country, namely Mysore, where some of the fundamental things, this measure wants to introduce, are already in force. We have, for instance, got the law of adoption as also the law regarding the daughter's share, and several other things, though they are not on all fours with the present measure. But the principle is there. We have enacted a Bill as early as 1934, called the Hindu Women's Rights Regulation and for the last fourteen years that Bill is law in Mysore, but we have not found there any general upheaval. There is not much litigation nor is there any disruption of the Hindu society as has been feared by some of the honourable Members here. As a matter of fact, by our experience we have come to understand that the measure which is now in force is not of the extent that is needed and another Committee has been formed with a view to see that there is further improvement in the existing measure.

It was said that the measure before the House affects the caste system or some other fundamental beliefs or principles of the Hindu society. Well, Sir, my reading of some of the Hindu literature is that if we study the Vidic period, that is from 2000-1400 B.C., and study the Hindu society then in existence, we do not see any of these four castes in the Hindu society then in existence. Every man born, according to his *gitna* or *karma* had to go through all the *vamas* or *ashramas* in his life time. A boy, until he attained the age of twenty, had to perform the household duties and obey his *guru* and do all the other acts that were assigned to him, and he was called a *shudra*. After the age of twenty he was allowed to be married and he had to take the responsibility of maintaining the family, then, according to the duty that was imposed on him he was called a *vaishya*. After he enjoyed life for some time and after he reached the age of 40 or so, when there was need for every man to defend the State, he had to do the duty of a *kshatriya*. After he attained a particular age, say 60, when

* C.A. (Leg.) D., Vol. II, Part II, 28th February 1949, pp. 953-56.

he had seen so much of life, and on account of his experience and learning, he undertakes the task of teaching the disciples and doing oilier duties of wisdom, and he was called a Brahmana, a man who has got the *guna* of *Brahman*.

Therefore, this caste system in this country originated in a different way, and developed in a different way. But today we understand that there are nearly 13,000 castes and a much larger number of sub-castes which have got different traditions, different customs and what not.

We find today that we are one so far as political unity is concerned. If we want to have any uniform standard of rules or any uniform standard of our laws, it is absolutely essential that there must be some Code which gives a certain standard. May be if necessary at the consideration stage we may consider which of the clauses are necessary and which are not necessary; but if we say there is no need at all for a Code, I do not think any of us, if we apply a little commonsense, can accept that position. We see in this country there are people who profess different beliefs—*Dwaita* and *Adwaita*. There are people who practise monogamy and polygamy and in some places there is polyandry also prevailing. Under these circumstances, is it not necessary for us to see that we have got a uniform code for purposes of inheritance, marriage and several other things? During the time of the Britishers we found that in the guise of religious neutrality or non-interference, they never cared to see that any evils in the Hindu society were wiped out; they never attempted any reform in that direction. As a matter of fact, when Warren Hastings was impeached by Burke, it is said that one of the charges levelled against him was that he used those caste codes for purposes of his personal aggrandizement. The Britisher saw that the caste system was ideally suited for his own advantage, therefore he never interfered to bring about any needed reforms in the society. But that is no reason that at a time when we are free, we should not aim at bringing about this much desired reform. Somebody said, we are proceeding further, why should we take up this measure so early as this and why should we not wait for some more time? My point is this : this reform was long overdue; it ought to have come much earlier but for the fact that we were a dependent nation and that we were not masters of our own destiny. My submission is that it has not come a day too soon.

So many other objections were raised regarding the competency of this House etc. As a matter of fact, the honourable the learned

Mover has given a clear exposition as to how we are competent to bring about this desired result; So I do not wish to take the time of the House especially as there are many other speakers.

With regard to the principle of divorce, it is in my opinion a very much debated point. It is a thing which really agitates a large number of people in the Hindu society. Whether it be sacramental marriage or any other form of marriage, I do not wish to see that there should be under any circumstances an indissoluble tie of marriage. Instead of giving unfettered discretion to people. I would request the honourable the Mover to consider this point, namely, that a time-limit may be imposed—say five years or three years, whichever is approved by this House—within which the married people may be able to round off their angularities, having time to study each other, and if inspite of it they are badly off, it may be necessary that the marriage tie will have to be snapped.

Pandit Lakshmi Kanta Maitra : Marriage on probation, you mean ?

Shri H. Siddaveerappa : Not marriage on probation, but before anybody can have the benefit or advantage or whatever you call it of divorce, a particular period should be prescribed within which no married couple may be allowed divorce.

Shri L. Krishnaswami Bharathi: That is the English law. They have three years there.

Shri H. Siddaveerappa : Let us consider the experience in the Western countries; for instance, let us take America. We have the experience of a famous divorce court judge, Lindsay. Whenever anyone went to him for a divorce, he used to tell: "You people will live together for one or two months and then come to me again. Even inspite of it, if you feel that you must get yourself divorced then you may apply." He says that invariably his experience as a judge is that whenever people try to separate each other, it is because that they have not tried to understand each other. If there was occasion to judge each other, there may not be recourse to this extreme form of separation. Therefore, I suggest that some such period should be prescribed in regard to divorce.

Regarding the theory of fragmentation of property, we find that agricultural land is not at all affected by this measure. It is a good thing in itself.

Ch. Ranbir Singh (East Punjab : General): It is affected, in Centrally Administered Areas.

Shri H. Siddaveerappa : No, it is not. Only the Centrally Administered Area is affected, which is a very small area. So far as this agricultural land is concerned, I think the time has come when we should undertake agrarian reform in the interests of our own agriculture and our own existence so far as food is concerned. Not only that, with regard to inheritance the time has come when we shall have to have some such thing as the law of primogeniture. In view of the fact that 90 per cent, of the people of this country are living in the villages and their property is mostly agricultural, and in view of the fact that this property of the 90 per cent, of the people is taken away from the operation of this Act, I believe the theory of fragmentation does not stand to logic or reasoning.

With regard to custom, some of my friends submitted that custom ever rides law, therefore any custom having the sanction of law should be accepted. I think many of us, who have experience as lawyers, can easily see how custom conveniently comes in handy to take away the effect of any benevolent law. I may give one instance. There is a provision in the Indian Penal Code under which if any girl is dedicated for an immoral purpose it is an offence. The marks of dedication are the tying of some heeds round the neck of the girl. Now the ingenuity of a lawyer was able to invent the custom of tying of beeds and apply that custom even in cases where the dedication was done for immoral purposes. Apart from this, we also know how on account of custom litigation sets in and how enormous amounts are spent in it, at least it was so in the previous regime. People used to spend enarmous amounts in getting a decision on any particular point and squander money over judges distinguishing between two different judgments. Today this Bill is so simple, so lucid, that without recourse to any lawyer, any man can for about four annas ascertain what his position is with regard to law.

Pandit Lakshmi Kanta Maitra : He can manage everything with four annas, you mean ?

Shri H. Siddaveerappa : It is quite possible. A day will come. We will have to try for that also. As a matter of fact, we have been seeing how these judicial decisions affect some of the property rights and other things. A judge comes to one decision and that will be law for some time. Tomorrow they may find out some other law,

some text or *smriti* or some such old document, and we will be told that this law is overruled, with the result that nothing is settled in Hindu law. As a matter of fact, we have been seeing under the British regime, for the last 150 years, there have been so many decisions after decisions, any number of them and still they say nothing is settled in Hindu law. I want to ask when we will have a settled form of law wherein the ordinary man can understand what exactly is his position. As a matter of fact, when a creditor wants to give some money, he has to satisfy who are his heirs, who have shares and all that, with the result that on an agricultural land on which he can give Rs. 1,000 loan, he gives only Rs. 500 or so. Therefore, taken from any angle of view, I believe this is a very healthy measure, so I give my wholehearted support to it.

Mr. Chairman : The debate will continue tomorrow after Question Hour.

*HINDU CODE—*contd.*

† Shrimati G. Durgabai (Madras: General): It is with great pleasure that I rise to support the motion made by the Honourable Minister of Law. I also feel that I should express my deep debt of gratitude to Sir, B. N. Rau and his colleagues on the Committee who have bestowed great labour on the report which forms the basis of this Bill.

The Bill to codify the Hindu law when it goes on the State Book will be a great landmark in the social history of this country. Before I go in greater detail into the main provisions of this Bill I would like to stress one point. Honourable Members are aware of the fact that the provisions of this Bill are of a permissive or enabling nature. They impose no sort of obligation or compulsion on the orthodox section of the Hindus. Their only effect is to give the growing and clamant body of Hindus, men and women, the freedom to live a life which they wish to live without in any way affecting or infringing their liberty *to* adhere to the old ways.

I wish to confine my remarks only to one or two main objections that have been raised against the bill. The first objection is against the attempt at codification itself. It is urged that many of the principles of the Hindu Law are now well-settled, and as it would unsettle the settled law, a code is not called for at all. The other objection is that far from preserving the principles of Hindu Law which have been handed down from generation to generation an attempt at codification would tend to introduce principles which are quite alien to Hindu society. It has been said that the Legislature has no right to alter the law of *smritis, shrutis* and sages of great repute. An other charge against the Hindu Code Bill is that it seeks to introduce changes of a revolutionary character and therefore, it will destroy the law laid down by *smritis* and *Dharma.* My answer to all these objections is that it is just because many of the principles of the Hindu Law are now well settled, that an attempt to set down all these principles into a systematised and easily understood code should be made.

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Hindu Law as it exists today is rigid without being certain. Many judicial decisions and precendents have outlived their usefulness. As an English writer puts it, the case law on the subject has become a luxuriant jungle where it is not possible to see the wood for the

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* C.A. (Leg.) D., Vol. II, Part II, 1st March 1949, pp.591-1030.

†*Ibid.* pp. 991-95.

trees. There are frequently conflicting decisions of various High Courts given from time to time. Even the decisions of the Privy Council on some of the intricate questions of law are widely felt to be out of accord both with ancient authority and also modern spirit. A uniform and unified law will prove a boon to Hindu Society, because it would save considerable time of law students and also practitioners, who have otherwise to take a considerable number of years to get to acquire a full grasp of the law. Even the ordinary citizen will also be able to read the code and say to himself, "Within this cover is the whole basis of my rights, privileges and obligations." A code will also minimise the time and labour of Judges and it would also induce the speedy administration of justice. To be without a code is, in my opinion, to be without justice.

The objection that it has introduced changes of a revolutionary character is mainly voiced by vested interests. The subordination of some of the present interests to secure the future interests of the country is always a thing to be welcomed. As a matter of fact, this Code does not really go far enough in that direction and that is my opinion.

The bulk of the agricultural property is excluded from the operation of this code. Therefore, it is urged that your object to have a uniform law is frustrated. Why attempt a Code at all if this object is defeated? My answer to that objection is this. What is aimed by this code is to have a uniform law for all Hindus, but not a uniform law necessarily for all kinds of property. In the interest of agriculture itself, if not for anything else, separate laws and special laws will be enacted by appropriate legislatures which may include a special law of succession which is quite different from the law of succession applying to other forms of property. .

Now, I come to what I consider as the main objection, that is, the giving of a share to the daughter. This was opposed on many grounds that it would lead to disintegration and fragmentation of property, besides introducing a foreign element in the shape of the son-in-law. And also it is objected to on the ground that the simultaneous heirship of a daughter with a son would simply shatter the Hindu society. Also it is said that if the daughter takes away a share the love of her brothers is lost. It is also said that sons in many families would simply be ruined under the double burden of marriage expenses and also a share to the daughter. May I ask what sort of affection it is of the brothers if only it would involve putting a little more strain on their own self-interest? May I also ask if no share is given to the daughter the sons' love will be greater?

With regard to fragmentation I fail to understand how this question be raised, as it has already been said that agricultural property is excluded from the purview of this Bill. This point was raised by one of the honurable members of this House and we are all aware that the bulk of agricultural property is excluded from the operation of this code. It would only apply to urban and movable property. What they mean, I feel, by fragmentation is dimunition of the share which they will gel if the daughter is also given a share, the daughter being of the same flesh and blood should there be so much uproar, I ask, if a share is sought to be given to her?

With regard to the introduction of a stranger into the family my answer is that the property which the daughter takes from her father, if necessary by legislation may be made to form as part of her separate properly. The evil or the good resulting from the legal provision depends also on the particular individual i.e., son -in-law concerned. I do not want to say much about this.

It should be noted that the daughter, as do the sons, demands a share, if need, be only after the death of the father and there is absolutely no question of her demanding a partition when the father is alive. Therefore I do not see why some honourable members should object to this. As the Law Minister has already dealt with the matter, the *smritis* themselves have recognised the share of the daughter to her father's property and therefore there is nothing revolutionary about this and the attempt to exclude the daughter on the ground that she does not contribute to the spiritual benefits of the father or her ancestors is, I say, unjust and unfair.

In this connection the argument is put forward, why not the daughter take a share in her husband's property and not come to ask for a share in her father's property? This appears to be a compromising formula. I may say straightaway that this compromise formula is not or will not be acceptable to women. We say that we should be recognised on a basis of equality. This code proposes to abolish the distinction that exists on the basis of sex and that should be removed. The daughter should be recognised as an heir and should enjoy her property in her full right as a daughter and as an heir to the father. As regards the question of disintegration I have already dealt with the matter. The evil could be met by different ways. Fragmentation can be stopped and consolidation could be secured by special laws. If the properly goes down to a certain extent that could be sold and

the shares could be adjusted. There are different ways how this problem could be tackled and the argument on that score could not be advanced that the daughter should not get a share. Hence the Select Committee has recommended, based on this principle of equality that she should be given an equal share with the son. I appeal to the honourable members of the House to support the recommendation made practically unanimously by the Select Committee in this regard .....

Shri H. V. Kamath (C. P. and Berar: General): Dr. Ambedkar was not in sympathy with that.

Shrimati G. Durgabai: Therefore when it is said that the daughter takes a share both from the father and from the husband and the husband takes nothing, how about this? The Select Committee has recommended that the man also can inherit the wife's property in the same way as the wife inherits the husband's property and also the son will be given a share equal to that of the daughter's in the mother's property just as the daughter claims a share in her father's property. Therefore, there should be no difficulty even in this regard for those who oppose this Bill on these grounds there is one answer given. I do not want to quote because the time is limited and other members are anxious to speak (*Honourable Members* : Go on. Take your time) Mr. V. V. Srinivasa Iyengar pointed out in this connection that those who oppose this legislation on religious grounds labour under a misunderstanding that Hindu law has remained static from the time of Manu. That is not the position.

This takes me on to another subject and that is about the status of women with reference to the holding of an estate absolutely and not in life, the Bill seeks to remove this disqualification attached to woman's estate and it gives her the right to hold property absolutely and not for life only. The main argument in favour of limiting the estate in the case of women is that they are incapable of managing it and also that they are likely to be duped or exploited. Also it is said that they arc illiterate and they do not understand the principles of management and hence there will be a strong inducement to designing male relatives to lake away her right. My answer to all this is this. The House is aware that the daughter has an absolute estate in Bombay today. Therefore, on that ground I do not think they are exposed to any risk. The other argument is that we have score of instances where women have proved better managers than men. Also there is one more argument. No doubt I agree that women are

illiterate but may I ask you how many men are literate? Three out of four men continue to be illiterate today (*An honourable Member:* 'Nine out of ten'.) Therefore, the relative advantage enjoyed by men is confined only to one in four of the male population (*An honourable Members*: 'they are the sons of their mothers.') and is should also be remembered that the percentage of literacy among women is rising very much faster today than it is among men (*Shri H. V. Kamath* : 'Question.'). With regard to the quantum of her share I have already stated the position of the Select Committee. We have recommended an equal share to the daughter. I appeal to you that you should be generous enough to endorse the recommendation made by the Select Committee without any hesitation on your part. I will now come to another subject, namely monogamy. However much I wish to speak on this subject, I do not do it because of the limited time at my disposal. Not only that, but this has been dealt with amply by the honourable the Law Minister and also by several other speakers. Many arguments have been put forward on economic and social and other grounds; even religion and spiritualism have been sought in aid to support their arguments. But feelings were expressed in a very light hearted manner: if only a man is healthy and wealthy, why not he marry and marry again! Also, that if the rule of monogamy is enforced many Hindus will become Muslims in order to secure the benefits of polygamy! I need not answer this question because I have found one lady witness very ably and effectively answering tills point. She said that if the rule of monogamy is not enforced, it may be that women will become Ciiristians in order to secure the benefits of monogamy, but neither of them I think is serious.

Shri B. Das (Orissa : General): Do you think a Christian woman is happier than a Hindu woman?

Shrimati G. Durgabai: As the honourable the Law Minister has already stated, the force of world opinion and the practices prevailing in the whole world are there and they are in favour of monogamy. Therefore, I need not deal with this matter any more.

Neither have I time nor is it desirable for me to take the other aspects of the Bill because there are other Members who will deal with the questions like marriage and divorce; but I only wish to say something on co-parcenary. The distinction between *Mitakshara* and *Dayabhaga* came as a result of the different interpretations put by the commentators and other interpreters. Fundamentally, the basis of

joint family is there common to both. The right by birth and the principle of survivorship is a distinctive feature of *Mitakshara.* The *Dayabhaga* system has in actual experience proved very satisfactory and the Bill therefore, seeks to replace the *Mitakshara* system of inheritance by *Dayabhaga* It is said the greater prosperity of the people in Bengal and their increasing commercial enterprise is due to a large extent to the *Dayabhaga* system. I am told that the commercial enterprise of Nattukottai Cheitiyars in Madras is largely due to their ideas of legal relations of the members of their families which approximate more to those of partnership than is the case in Brahmin joint families.

Much has been said on this subject, therefore, I do not want to labour this point. I feel that the opposition is more due to their love for this ancient institution, but those who oppose it I think oppose it because they forget the fact that Hindu Law and *Dharma* on these matters remain static and no changes have been made. Various judicial decisions have made changes from time to time into this system and the institution has been simply shorn of its characteristics. This point has been very ably answered by a very great lawyer like S. Srinivasa Ayyangar, who said that under the Hindu Law, as authoritatively interpreted by the Privy council, the unity is broken by any member at any time by a unilateral declaration of his intention to separate from the family. This is quite sufficient to answer that charge against the breaking of the co-parcenary or the replacement of the *Mitakshara* by *Dayabhaga.*

I do not want to take more time of the House. Many things have happened since the achievement of freedom and India has been participating in international conferences and pleading for human rights and also for equal treatment of Indians in foreign countries. It will be a great misfortune if at this juncture we fail to enact a Hindu Code within our own borders, in which there will be no discrimination and where there will be equality for men and women to move, to develop and to contribute to the re-building of our India. Our constitution is in the making, we have already passed the Chapter on fundamental rights, and recognised the principle of equality of everyone before law. We have also passed the provision enabling ourselves to have a uniform civil code. Therefore, I make this appeal to you. Let us not be wanting or halting in having a Code of Hindu Law for ourselves which will prove a great boon to our own society in the way in which I have already stated.

* **Pandit Lakshmi Kanta Maitra** (West Bengal: General): Sir, I am thankful to you for giving me this opportunity to put in a few words what I feel regarding the motion before the House, namely the consideration of the Hindu code. I know I am in a position of great disadvantage inasmuch as I could not be present when the Motion was debated during the first two days, as I had to be away from this place. I had, in the few moments I could snatch in the midst of my preoccupations, noticed Press reports that my honourable friend the Law Minister, Dr. Ambedkar had made a magnificent speech in support of his motion. Also, that an equally powerful speech—I am not making any comparison. I rely on reports, though there is a divergence of opinion even among the reporters that an equally powerful speech was made on the other side by Pandit Thakur Das Bhargava.

I listened with considerable attention to the four speeches that have been made in favour of the motion and the one against it. As the debate was going on yesterday, I could see the mood of the House— sometimes hilarious, but when a Member sought to differ from the main provisions of the bill, all manner of gibes and ironical cheers greeted him all through. (*Honourable Members:* 'No, no') I am glad it is not so. Well, I think it will give me some encouragement because most members know—I think every single member knows—which way I will speak. I do not know how I came to attain this sort of notoriety—I could not say, fame—that I do not support the provisions of this Bill. I will make no secret of it, (*An Honourable Member*: Why should you?) because I will speak out my convictions. I know what a delicate task it is for me to be addressing this House, constituted as it is and in the mood in which I find it. I know that I may have to rue the temerity which I have shown by taking courage in both hands to say what I feel. It is rather helpful that immediately before I address this House. I have had the opportunity of listening to my honourable sister, Shrimati Durgabai, who has made a closely reasoned speech in support of this Bill.

I must apologise to my sister for not being able to agree with her in the theories which she has so confidently assumed as being almost accepted by all. She finished her speech with a peroration, appealing to the House to give effect to the principle in the Draft constitution

* C.A. (Leg.) D., Vol. II, Part II 1st March 1949, pp. 995-1015.

providing for equality for all in the eye of the law. Yes, we have done that. She also reminded us that we have already passed, as one of the Directive Principles of the Constitution that there should be a uniform Civil Code for the whole of this country. I am glad she gave me the starting point of my speech today. When this subject was debated a couple of months ago in another place and when it was thrashed out elsewhere informally, I registered a vehement protest against this provision, as I felt, that it was nothing but an outcome of shibboleths and slogans—a uniform Civil Code for a country inhabited by 32 to 34 crores of people professing all manner of faiths : Hinduism, Sikhism, Jainism, Buddhism, Christianity ; and last but not the least, Islam! I tabled amendments that the personal law should be secure and that this was an encroachment by the Slate on the personal law of a person which the Slate had no right to make.

Maulana Hasrat Mohani (U. P. : Muslim): Hear, hear.

Shrimati Renuka Ray (West Bengal: General): That is the reason why you should support this Hindu Code.

Pandit Lakshmi Kanta Maitra : The honourable sister in front of me says that it is the reason why I should support the Hindu Code. May I say that that is the very reason why I am going to oppose the Hindu Code—one of the main reasons. You must be logical. I can understand the feelings of my sisters. Do not think that I am a hater of women, that I am a misogynist, or that I have no feeling for women. (*An Honourable Member:*' He is a married man ') Yes I am a married man. I have a humble wife—married according to Hindu shastric rites,—a simple, unsophisticated lady, bred up and nurtured in the ideals of our Hindu homes. (*The Honourable Dr. B. R. Ambedkar:* 'What a pity') It is a pity ! May be, but I have not much of love or liken for the lavender, lipstick and vanity bag—variety of that sex. I am happy, and I am sure out of every hundred Hindu homes, 98 have got these types of wives and are quite happy. (*An Honourable Member:* 'Why 98 ? 99.9 per cent, are so') I am glad, a friend says it is 99.9 per cent, recurring. That enforces my argument. So I can tell my honourable friend Dr. Ambedkar that I have not felt the necessity for the drastic changes that he has sought to introduce in this Bill. (*The Honourable Dr. B. R. Ambedkar:* 'Neither did I feel any'.) My honourable friend says he also did not feel the necessity. If he did not really feel any necessity for these sweeping changes, then do I take it that it was due to his megalomania that we have got this Hindu Code

Bill ? I have very great admiration for my honourable friend Dr. Ambedkar, with whom I had the privilege to work for a number of years before this Assembly. I respect him. I know the performance he has been daily putting in connection with the Constitution Act, (*Honourable Members:* 'Hear, hear') I appreciate him. I admire him. But I will never appreciate what he has been doing in connection with this Social Legislation which is sure to disrupt the Hindu society by the revolutionary changes which very few of us can now realise. (*Honourable Members:* 'No revolution. No, no') Yes, I am glad it is "No no.' If this Bill is passed into law.....

Babu Ramnarayan Singh (Bihar: General): No.

Pandit Lakshmi Kanta Maitra: What no ?

Babu Ramnarayan Singh : It would not be passed into law.

Pandit Lakshmi Kanta Maitra: I see. If this Bill is passed into law as it is I will then see who is a better prophet—myself or those who say "No, no."

Shri L. Krishnasvvami Bharathi (Madras : General): You wait and see.

Pandit Lakshmi Kanta Maitra : Well, wait and see. Posterity will judge, and I do not think you will have to wait till posterity. You will have to wait only till the next General Election to see what the country has to say about you and your work.

Maulana Hasrat Mohani: Hear, hear. Well done.

Pandit Lakshmi Kanta Maitra: Sir, the first point raised by my sister Shrimati Durgabai was that having passed that Directive principle, you should not now object to the Hindu Code. When that Directive Principle was accepted by the House. I thought that the snake had been killed—the Hindu Code Bill,—but I now see that the snake was only scotched ; it has reared its head again and will in time spread out its fangs of venom. If you are true to your Directive Principles, if you mean to act on them, then why bring the Hindu Code Bill. Bring a Universal Civil Code applicable to Hindus, to Christians, (*Shri L Krishnaswami Bharati: 'Will you support it ?*") to Parsis, to Sikhs, to Jains, to Buddliists, to Muslims. You dare not touch the Muslims but you know that Hindu society today is in such a bad way that you can venture to do anything with it. Only a few ultra-modern persons, who are vocal, but have no real support in the country, are interested in this Bill. (*Interruption*).

Mr. Deputy Speaker: Let him proceed.

Pandit Lakshmi Kanta Maitra : Millions of dumb people, ignorant but not the less intelligent or sensible simply because they do not have the collegiate education, or are not members of the legislatures think that such a radical change in their personal law is not called for. They are not to be ignored.

Shrimati Renuka Ray : Then do not draw up the Constitution.

Pandit Lakshmi Kanta Maitra : I therefore feel that there is no sincerity in the acceptance of the principles of one uniform Civil Code for the whole country; or else, how could you, within two months of it, come out with this Hindu Code Bill which seeks to govern only the Hindus, Sikhs, Jains and Buddhists?

Shrimati Renuka Ray : Hindu Code came much before.

Pandit Lakshmi Kanta Maitra: You have omitted Christians, Muslims, Parsis.

Maulana Hasarat Mohani: Muslims will never accept any interference in their personal law.

Pandit Lakshmi Kanta Maitra : You need not have reminded me. I know that. I perfectly appreciate the proposition of my honourable friend Maulana Hasrat Mohani. But all the same. I think this is a fundamental departure from the accepted principles in the Constitution.

When my honourable friend Shrimati Durgabai said that codification is justified. She tried to prove that an irresistible case had been made out for codification. With all respect to my sister Shrimati Durgabai I submit I stand unconvinced. I can understand the necessity for codification when the law is in a state of flux or that there is much diversity of opinion, or a good deal of vagueness or uncertainty about it. Codification should in such a case be undertaken by the best legal brains in the country silting together to give shape to the various principles of law which are more or less in a confusing or uncertain state. Is that the case with regard to Hindu law in this country ?

Shri Krishna Chandra Sharma (U. P.: General); It is.

Pandit Lakshmi Kanta Maitra : I accept your statement but I feel deep regret for the colossal ignorance you have exhibited. Hindu law, if my honourable friend is a lawyer and holds that view, he has not practised. He will please excuse this friendly retort. I can stand interruptions. If you interrupt me you will be only adding ginger to my speech. After the advent of the British to this country, the Hindu

law got gradually crystallised. They did not dare to touch the personal law of the people of the country.

Babu Ramnarayan Singh: They brought in limited estate for women.

Pandit Lakshmi Kanta Maitra : I am coming to that straightaway. If I forget to reply to that point, kindly remind me. Hindu Law is such a vast subject that I can talk for hours on it, if the Chair permits me to do so. I assure you, Sir, I am not going to do that.

I protest in the first place against the manner in which this Bill has been sought to be smuggled into this House and through this House. It is an extraordinary procedure, Mr. Deputy Speaker.

Shrimati Renuka Ray : I object, Mr. Deputy-Speaker, to this insult to the House.

Pandit Lakshmi Kanta Maitra : It is not a point of order,

Shrimati Renuka Ray : This is a point of order, Sir. I object to the remarks made against the house.

Pandit Lakshmi Kanta Maitra: 'Smuggling" I have never understood to be an unparliamentary word. If the honourable member thinks that there is any stigma attaching to it. I would use another word in substitution thereof. I would say that the haste with this Bill sought to be passed in the House is extraordinary. Is that also an unparliamentary word ? If so, give a parliamentary expression for that. You cannot find a substitute for it. (*An Honourable Member:* 'Commendable speed'). It is a most extraordinary procedure that has been adopted in this House. I have some little experience of parliamentary activity in this House. I have never known an occasion when a Bill of this importance and magnitude has been sought to be passed in the way it is done now.

Shri Brajeshwar Prasad (Bihar : General): It will never be passed. (*Interruption*).

Pandit Lakshmi Kanta Maitra: I like interruptions but I could not catch what he said. If the honourable-members think that by constantly interrupting me in this way the effectiveness of my speech will be marred they are mistaken.

The Bill was introduced on the last day of the last Budget session.

Babu Ramnarayan Singh : Last hour.

Pandit Lakshmi Kanta Maitra : You know very well how a Bill of this importance and magnitude, a Bill which seeks to regulate the life and conduct of Hindu society was introduced on the last day of

the last session ; how at the end of the day's work we sat beyond 5 o'clock for two hours and the honourable the Minister for Law was allowed to make a speech committing it to a Select Committee, only three or four speakers, under a rigid time limit were allowed to speak and at 7 O'clock after a short session the motion was carried. Thereafter what happened ? It went to the Select Committee. The Select Committee reported on it and on the motion for consideration of that report points of order were raised in this House. I am not going to enter into the merits of those vital points of order. They were disposed of. So great was the impatience that in the last session the honourable the Law Minister wanted to simply say that the Bill be taken into consideration and there was no speech. It was somehow got into the agenda. Very well it was done. Points of order were ruled out and it was found that it was within the competence of the House to go on with the measure as reported by the Select Committee. Now look at the way in which it is being dealt with now. In the short indulge between the Railway Budget and the General Budget this is sought to be pushed through. There is no seriousness about it. Nobody feels its importance. The country at large is bewildered by the way in which we are dealing with a piece of legislation of this far reaching importance. If you attach real importance to it, if you really mean business, if you want that something should be done by way of revising the Hindu law as it is today, this is certainly not the way to do it. Keep the Bill for a special session. For small Banking Bills and the like you are devoting days and days. That being the case, do you mean to say that a Bill which seeks to regulate the life and conduct of the Hindu community should be dealt with in the haphazard way in which it is sought to be done ? I enter my emphatic protest against the way in which this important legislation is being considered. You know how at 3 o'clock yesterday there was the Supplementary Demand for Railways and later in the day the General Budget came in. I wish to submit, Mr. Deputy Speaker that I have not been accustomed to this kind of procedure with regard to Bills of this nature. I ask the old Members of the Legislature to recall a single precedent for this.

Babu Ramnarayan Singh : There is none.

Pandit Lakshmi Kanta Maitra : Sir, the question is, is there any real necessity for codification. I see absolutely none, because, as my learned friend Shrimati Dorgabai said, the Hindu law is well settled and it has held the field for about hundred years. The ancient Hindu

law, when the britishers came here, was interpreted with the help of Indian Pandits. They used to call them Judge Pandits who ransacked all the *Smrities* and *Dharma Shastras* and interpreted the law. This process continued till they succeeded in evolving from the rest mass of *Smrities* and *Nibhandhanas* and usages, a system of judicial principles constituting the Hindu Law which now hold the field.

Sir, it is well known that the Hindu Law has the oldest pedigree of all the known systems of jurisprudence in the world.

Dr. Mono Mohan Das (West Bengal: General): It is unjust.

Pandit Lakshmi Kanta Maitra : Yes, the Hindu law is unjust ! Hindu society is unjust! Hindus are unjust! It is not possible for anybody to reply to an interruption that the Hindu law is unjust. It took only three words to compose that interruption. I do not know if I have the capacity to reply to a sweeping charge like that made in three words 'It is unjust', Whether a system is good or bad, it is for the society to judge ; it is not for disappointed or disgrauntled persons to judge. But I may say that the one surest proof of its soundness is that it has been able to stand the test of centuries. No system which is intrinsically bad, unsound or unjust can endure for a long time. Hindu law and the Hindu social system governed by it have been able to withstand the shocks and revolutions which have swept over the country during the ages past. Historic cataclysms have swept off the feet of ancient civilisation of countries like Greece, Rome, Assyria, Babylonia—which have all crumbled down—whereas Hindu culture or community, which cannot date its origin, still continues to function with all the vigor and vitality, and I am sure, Providence will allow it to function, till we set about to undermine its very foundations, by legislating in these reckless and light-hearted ways. If there was anything essentially weak in the foundations of Hinduism it would not have been able to survive the upheavals that overwhelmed it throughout its long and chequered history. This country has been subjected to foreign rule for over a thousand years. History will tell you how she has shown her wonderful adaptability, reflection will reveal to you that the Hindu law has had in it the germs of flexibility and adaptability which have enabled it to adjust itself at all times to the changing needs and to meet the challenges of the times.

Shrimati G. Durgabai: Hear, hear.

Shrimati Renuka Ray: There is a change now. *(Interruption).*

Pandit Lakshmi Kanta Maitra: I am glad that I get a spate of interruption, which gives me breathing time. Please do that singly. Mr. Deputy

Speaker, I am not so big a fool as to hope that many will be convinced by what I say, but I do hope that someone of us at least, may give some little thought to what 1 say. I earnestly plead that Hinduism, the Hindu Law; the Hindu culture have got immemorial traditions, agelong-moorings, which it would not perhaps be wise for us to sweep away by one stroke of the pen. I make this appeal to my friends to the right and to the left. Sir, I am apprehensive tills is just what the present Hindu Code Bill is going to do for us. I do not find anything Hindu about it. It can be more properly called an 'un-Hindu' or 'Anti-Hindu' Code.

Mr. Nazruddin Ahmad (West Bengal: Muslim): Muslim Code.

Pandit Lakshmi Kanta Maitra: Whatever else it may be, it is not a Hindu Code. It does not breathe the spirit of Hinduism : it reeks of un-Hindu ideas : a spirit of supreme contempt for anything Hindu permutes the whole Bill from the beginning to end.

Shri H. V. Kamath : What is the Hindu spirit ?

Pandit Lakshmi Kanta Maitra : Sir, do you call that Hinduism ? You please think over your system of marriage and inheritance which form the cornerstones of Hindu system or Hindu society ; are you going to undermine it in the way in which you are going to do ? That is the question that you will have to answer not only to us here but to our countrymen outside and to the posterity.

Sir, I do feel that if we codify the law in the way it is sought to be done, as a simple intellectual pastime, codification for the sake of codification, I will plead with my honourable friends that it is unwise to do that. It is not necessary. No need for it has been felt by anybody. Look at the opinions of the judges of the different High Courts and the District Courts. They are the people who have to administer the Hindu law. Has the Government got a vast volume of opinion embodying the demands from the judiciary that Hindu law require codification and that also in the way in which it is sought to be done ? No. Has there been such a general demand from the people who have to guide themselves, guide their lives and conduct by the provisions of this law ? Have they demanded it ? Has there been that kind of demand ? My honourable friend to the right says : No. It is perfectly correct.

Shri L. Krishnaswami Bharathi: He supports you.

Pandit Lakshmi Kanta Maitra: My honourable friend says : he supports me. He supports truth. The country will be taken by surprise

at what we are doing. Let us not lay the flattering unction to our souls that we are doing a wise thing. I know I cannot deceive myself in the way in which you are doing. Even if it were wise, I would not have thought it necessary to attempt that codification, because of the reasons I have given. You cannot give any uniformity to it whatsoever; and if Hinduism is anything, it is because of its fundamental unity in the midst of diversity. That constitutes the essence of Hinduism. Hindu law and Hindu culture. In a vast country like this you cannot expect a uniformity standardized sort of life ignoring the natural variety. If you did it, it is no wonder that you would come to grief. You may not realize it just now, but realization would come when the time comes. After all even after this codification, is it going to serve your end ? I say : no. The honourable member from Mysore yesterday made a speech. He said, now the work has been made so simple that by buying a publication worth four annas or six annas you could know exactly what the Hindu law stood for. So many friends shout 'quite right' 'quite right', but do these enthusiasts realize that even the sponsor of the Bill does not pretend that he is going to codify the whole law of the Hindus ? In the preamble he makes a modest claim, not that kind of preposterous claim ; He says :

"Whereas it is expedient to amend and codify *certain branches of the* Hindu law now in force in the Province of India." Therefore what is proposed to be done is to codify certain branches, such as the law of marriage, law of inheritance and law of adoption. Broadly speaking these are the main things.

Shri L. Krishnaswami Bharathi: What is left.

Pandit Lakshmi Kanta Maitra : My honourable friend asks what is left in the Hindu Law. Does my honourable friend think that this is all that the Hindu Law stands for ? These three branches cover the entire field of Hindu life and activity in this country? I can only sympathise with his ignorance. What about joint family property, partition, joint family business, religious and charitable trusts, gifts, transfer *inter vivos,* and other things ? They constitute a much vaster field which is left uncovered.

Shri L. Krishnaswami Bharathi: Wills is also referred to.

Pandit Lakshmi Kanta Maitra : A mere reference to Wills does not mean that it has received a full and comprehensive treatment. In any case, I am grateful to Dr. Ambedkar. He is modest; he never claims to have brought forward an exhaustive Code. If my honourable friends

on my right think this is all the Hindu Code, they are out Ambedkaring Ambedkar. Sir, even if this Hindu Code is adopted in the form in which it has been brought before us, it will rail of its purpose for another reason also. My honourable sister Durgabai and my honourable friend from Mysore said yesterday, well, why do you worry about this : this will not lead to fragmentation of agricultural property. I do not know whether they realised that they were furnishing one of the strongest arguments for rejecting this Bill. Unconsciously, my sister and brother have furnished one of the strangest arguments for the rejection of the Bill outright. You are going to regulate the disposition of property. It is now generally accepted that 90 per cent.of the immoveable property in this country is in the villages, in the provinces, leaving aside the Centrally administrated areas. Therefore, they would be out of the purview of this Code. To house or other immovable property inside the Centrally administered areas, directly under the Government of India, this Code will apply. Then, how is this claim satisfied that this Code applies to all the Hindus in all provinces ? Thus is a very strong argument for throwing out the Bill; throwing out on the ground that it fails in its objective. Besides the three categories I have mentioned, there are so many things which have yet to be covered. The argument would be that provincial agricultural land is purely a provincial subject according to the Constitution Act; so also are religious and charitable trust properties, so also joint family property, and partition, self acquisitions, etc. When this vast field would lie uncovered. I ask the House seriously whether they are really satisfied with the claim of those who think that this is going to be an exhaustive Code or an all embracing Code and that it provides the panacea for all the social and economic ills to which Hindu flesh is heir to. Do they really believe that the 139 sections will be the vitamin tablets which will go to vitalise the whole Hindu society ? You may hold that view ; the House may hold that view; I do not hold that view. On the other hand, I think this is premature, absolutely premature. Even if the Hindu Code be passed into law, it could not come into force all until the provincial Governments pass similar legislation in their own provinces for devolution of agricultural land. Every single province will have to do it before this Act could come into force in all the provinces. I am not now talking of the states ; I am talking of the provinces. Besides, it is not inconceivable that the provinces may be taking different decisions. It is not for the Central Government to force the Provincial Governments to legislate on a particular line of succession, a particular line of devolution of agricultural property according to its dictates. Then

provincial autonomy will fail to the ground and I am certain that the provincial Ministries will not touch such a proposal from the Centre even with a pair of tongs if such direction went counter to their own views.

Mr. Deputy Speaker: May I state for the information of the House that there are as many as 37 members—I have received chits, letters and so on from them—who are all anxious—most of them, if not all—to put forward their view points on this Bill. I would therefore suggest, however interesting the speech of the honourable member might be, that the points that have been raised on one side in support of the Bill may kindly be answered by others. Thus, all the points would be threshed out and this will contribute to the richness of the debate as well. Dr. Ambedkar has given a clear analysis of the Code with arguments. Of course, the House would like to know how those points are wrong and how they are met on the other side. Therefore, greater attention may be paid to that and also regard may be had to the number of speakers that are in the waiting list.

Shri H. V. Kamath : May I request you, Sir, to consider, in view of the vital importance of this Bill, that two or three days time is hardly adequate and that at least a week or two should be allotted for general discussion ?

Pandit Lakshmi Kanta Maitra : With great respect to the views which were expressed by you, Sir, if I have given the impression that I was filibustering, I am sorry. I may tell you, Sir, that this Bill is of such great importance that it would be utterly unfair to the House if you ask us to conclude this general discussion thus. Because, in the first stage, we had not the slightest opportunity to make a speech ; this is the stage after gating us committed to the principle of the Bill, in which we have to see how best we can serve our country, even within the limited sphere. If there are 36 speakers, there is the clearest possible indication that the Bill has now attracted serious attention and they want to give their viewpoints. Therefore, there is no particular sanctity to the period that is laid down for debates of this kind.

If we do not conclude the discussion today, certainly more days must be found for further discussion of this. This honourable the Law Minister is very zealous about it; he can give another additional session for this ; if not, even in this session four or five additional days could be found. The matter must be thoroughly debated. I hope the House will not accept closure; nor do I think that a closure will be moved

by the Chief Whip and a motion of this kind cannot be closed by whipping without ascertaining that there has been a full and sufficient debate.

Shri H. V. Kamath : Another point. May I request you, Sir, that the provincial MLAs who are not present here also be invited to come and participate in the discussion ?

Mr. Deputy Speaker: We will now adjourn

Pandit Lakshmi Kanta Maitra : I have not yet finished, Sir, I take it I may resume after Lunch.

Mr. Deputy Speaker : Yes. We will now adjourn for Lunch.

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

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The Assembly re-assembled after Lunch at Half Past Two of the Clock, Shri S.V. Krishnamoorthy Rao (one of the Panel of Chairmen) in the Chair.

Pandit Lakshmi Kanta Maitra : Before the House adjourned for the recess, I was trying to explain to it how this Code was bound to fail of its purpose in some of the material particulars. I explained that there was no necessity for codification as the Hindu law in all its aspects was not only well established but well understood by the people who were governed by it. I also explained that those who are to administer this Act—I mean the Judges, the judiciary of the land, including the highest—have never demanded that the law should be codified, and I also explained that the scope of the Bill was very very limited, and that besides providing for marriage, adoption and inheritance there was a water field which was left uncovered. While referring to the agricultural land, I may also point out to the House that according to the series of judicial decisions in this country, the question of land involves and embraces, a vast variety of interests and subjects, from the landlord of the topmost grade down to the tiller of the soil, the man behind the plough: and if the Provincial Governments of the different countries were to regulate the distribution of their property in different ways other than that indicated by the Central Act there was bound to be confusion worse confounded.

Then, Sir, I would like to mention that the Code has not only tried digesting the existing Hindu law within its limited sphere, but in that process of collating and digesting, a number of things have been

introduced ; a number of subjects, particularly in the matter of marriage and inheritance, which go diametrically against the established notions of the Hindus. Therefore, it is not merely a case of digesting, collating: not also merely a question of amending—because amending is a very mild expression: it does a good deal more than that. It introduces innovations, far-reaching changes, not only in the law of marriage but also in the law of inheritance. Sir, I wish I could explain to the House the full implications of the changes involved. But I am physically unequal to the task. I will try rapidly to explain how I look at these changes.

The two categories of changes which in my opinion and also in the opinion of the vast majority of my countrymen are very radical and sweeping, are those that relate to marriage and inheritance. Sir, my, honourable friend has no doubt provided for sacramental marriage in his Code. I do not know if in this country, up to the moment the Bill was drafted and given the shape it has now had, people really demanded of the Government of the land to prescribe a procedure by which marriages in this country are to be contracted. I think it is nobody's case that prior to the introduction of this Bill, people had not been marrying or there was a good deal of difficulty in getting ourselves married. But how the question of marriage would be improved I do not know. My fundamental objection to these marriages is, that while on the one hand it characterises one form of marriage as sacramental marriage, inside this sacramental cover there has been introduced a number of things which cannot conceivably be called sacramental or sacred ceremonial marriage. Look at the prohibited degrees. Look at the character of the parties. It can easily be an inter-caste marriage, a marriage outside caste, marriage of *sagotras*, and at the same time it would be sacramental marriage. It is rather curious, Sir, that while a sacramental form of marriage is being prescribed, along side with it there is a civil marriage. I do not know how it finds a place in the Hindu code itself. However, they provided an entirely different thing but a most objectionable thing is that while in the sacramental form of marriage one particular class of prohibited degress is put in, in the civil marriage an entirely different category is put; the ambit of the prohibited degree is narrowed down, so much so that the marriage in many cases becomes purely incestuous marriage. I do not understand, Sir, what necessity was there for this unless we by this measure, want to give direct encouragement to all manner of moral looseness and

lawlessness, which unfortunately is invading the youth of this country. Are we here going to give this the *imprimatur* of our sanction ? That is the question I would ask my honourable friend very seriously to consider and answer, not in a spirit of banter or levity but with all the seriousness that a difficult social problem demands.

I feel that the basic conception of Hindu marriage has suffered the rudest possible shock by introduction into it of the matter of divorce which is so repugnant to Hindu notions of marriage. Hindu marriage as ought to be known to every one who professes himself to be a Hindu, who honestly takes pride in calling himself a Hindu, as I myself do, is a sacrament and not a civil contract and as such it will not be difficult for him to admit that divorce is absolutely foreign to its concept. Union by marriage, according to the Hindu Shastras is sacred and absolutely indissoluble (*Interruption*). If you want me to cut short my speech you will kindly interrupt me only on important matters. I am not afraid of interruptions—I know how to answer them, I can answer them in my own way. But if you keep on interrupting me, my speech will be unduly long and you also may not feel happy over the replies I will give.

Babu Ramnarayan Singh : It ought to be so.

Pandit Lakshmi Kanta Maitra : The institution of divorce in this country, or in any country for the matter of that, has not been found to promote the well-being of the community for whose benefit it exists. As an humble student of sociology, I have had occasions to read reports of matrimonial courts. An honourable Member referred to Judge Lindsay and I believe he also had in view the "Revolt of the Youth". I do not know whether my honourable friend realised that he unconsciously provided one of the stronger arguments for opposing this form of marriage when he referred to that great Judge. I want honourable members carefully to consider, if within the family circle we should permit matrimonial alliances to spring up between a person and his mother's brother's daughter or his father's sister's daughter, as has, been provided in this Hindu Code.

Shri H. V. Kamath : It is common.

Pandit Lakshmi Kanta Maitra : It may be common in South India, but South India is not the whole of India. My whole point is that if there is a particular form of practice in a particular part of the country, you should not go out of your way to see that it is provided for the whole country.

I come from a province which is not in the South. It is a backward province, educationally, culturally—call whatever you like that benighted backward province of Bengal. I know of the domestic conditions of the families inhabiting there. Go to any Hindu household in Bengal you will find that besides the sons, daughters, and other natural heirs, all manner of relations, sisters' sons, nephews, nieces, maternal uncles' sons, uncles' daughters, all knit together and maintained in the joint family system. They are all regulated and restrained by moral and religious influences. You will find it in almost every household.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : What is the difficulty ?

Pandit Lakshmi Kanta Maitra: I shall tell you where the difficulty is. There is no difficulty for those who have no family of their own. The difficulty happens in this way. For dividing trouble here I shall illustrate with reference to myself. If in my family my sons, daughters, father's sisters' daughters and sons, mother's daughter's sons and daughters etc. sister's daughters were to live together and if one of my sons contracts intimacy with his first cousin even when he is a minor or an adolescent, knowing human nature being what it is, do you eliminate the possibility of this attachment growing up and culminating in marriage ? If you do, you are poor students of history, poor students of sociology and poor students of psychology. After all, the call of human flesh is there and no legislation, however omnipotent can root out this natural and powerful impulse in mankind. If you sanction matrimonial unions between blood relations—between closest relations in the household, I shudder to think what would happen to society ? The Honourable Dr. B. R. Ambedkar: Nothing.

Pandit Lakshmi Kanta Maitra : Nothing of course, if you do not care for society ; nothing, of course, if you believe in a kind of society only where there are only social butterflies sucking honey here and there and making merry ; but I am for a society which has attained or will attain for India the position which is her own, the position for which she is respected all the world over. If you throw away all these things, if you put up a sort of Vademecum, a Hindu Code, where you find all sorts of marriages, between first cousins and blood-relations sanctioned, if you legalise all these incestuous marriages the society will be a sink of moral degradation.

Shri L. Krishnaswami Bharathi: We protest the use of the word 'incestuous'. It is very wrong to condemn outright a system which is prevailing in large parts of the country. It is a reflection on a whole province.

Mr. Chairman : Order, order.

Pandit Lakshmi Kanta Maitra : Therefore, I cannot but raise my voice of protest against such a system, because I believe that marriage between first cousins is not conducive to the well being of society from the biological and engenic points of view and is opposed to the notions of Hindu Law.

L. Krishnaswami Bharathi: No, no.

Pandit Lakshmi Kanta Maitra: Thus, not only from the point of view of society, but also for the peace and purity of family life, I want that this should be condemned. It is immoral and outrageous. . Sir, my honourable sister, Durgabai, said quite rightly, that monogamy should not be opposed. I do not know of any honourable Member in this House who really does not want monogamy. Monogamy everyone of us want, not for our mere likes ; circumstances have forced us to accept this monogamous marriage. It is a fact. Polygamy has passed away completely from the upper classes of this country not by legislation. That is my main contention. If you want to eradicate a social evil you should work up from within, not from above. If my honourable friends look to the history of this country, they will find my position amply proved. We all know the miseries and sufferings of Hindu widows. There are so many cases of child and young widows which break our hearts or at any rate it ought to break our hearts. In fact, in the past generation, the late Pandit Vidyasagar of hallowed memory was so much moved by it that he got passed the Hindu Widow Remarriage Act. But the country was not prepared for it and what was the result ? The Act virtually became a dead letter and has remained so till now. That is bound to be the fate of all social legislation which have not originated from a demand from within the society.

I was telling the house that polygamy has virtually disappeared from the country for a variety of reasons such as a growing sense of responsibility in conjugal life, Growing consciousness among woman-hood and above all the interplay of all manner of forces, most important of which is economic, which makes it impossible to indulge in the luxury of having many wives at the same time. Therefore, I

say, there is no necessity for any legislation for it. It has automatically died out: the custom has fallen into disuse. It may be argued that there are some strata of society where it prevails. There also I want to sound a note of warning. You cannot stop it by force or compulsion. You have got to create public opinion and when these unfortunate breathren of ours come to realise the evils of this system they will discard it. If, on the other hand, without bringing up their standard, without creating a consciousness in them by education and public opinion you try to thrust your legislation down their throats, I would request you to realise the effect that it will have on them. Just as my honourable sister was telling us they will say : This is our society ; it is such a cast-iron mould and they would not allow us to have another wife. We will go to another form of society, embrace another religion where this is permissible. Any sociologist, any man interested in social reform will have to pay heed to that as well. The fear is not altogether an unfounded one. Anyway I feel that if you codified the Hindu law, all that should have been done was to prescribe the essentials of marriage, the requirements on the part of the contracting parties, their ages, their mental and physical capacity, prohibited degrees of relationship and things like that. Those who believe in social ceremonies and functions, may go through the form of ceremonial marriage but the essentials of marriage should not be allowed to vary between civil marriage and sacramental marriage. If there is a demand in the country for inter-caste marriages I will not stand in its way. If people want to marry outside their castes, let them by all means invoke the provisions of the Civil Marriage Act of 1874. There is nothing at present to stand in the way of people who are anxious to marry outside their castes. If there are *bona fide* attachments among intercaste boys and girls, it is not that we want to stop or prevent them. They have got the facilities open to them even under the existing law, the law to which I referred earlier. You can change that law. You can repeal or modify certain provisions so that people marrying under that Act will have their children governed not by the Indian Succession Act as at present but by the Hindu Law. I have no objection to that but I fail to understand why in a Hindu Code side by side with the sacramental marriage you are allowing civil marriage. This must be completely taken out of the Code which should have nothing to do with it. There may be a separate civil marriage law for all.

Sir, I personally feel that if you insist on having the question of divorce in it, then you will have to face the music of it everywhere

in the country and unless as public men you have your ears stuffed with cotton, as most public men among us have, you will have to pay very very dearly for it. In any case, as a Hindu, I emphatically protest against the introduction of this heterodox concept of divorce into the scheme of Hindu marriage.

Now let us come to the question of inheritance. There has also been an innovation in this regard though I do not want to go into very great details. But there also I would like to tell my honourable sister, Shrimati Durgabai, that we are firm believers in the judgement of the Hindu law-givers of old : we are firm believers in the equality of the sexes, though not in the sense in which she talks or her friends talk. Equality must be in the sense of equality of opportunity. You cannot make physically man and woman the same. Equality must therefore have some other meaning. There is no feeling of inferiority attached to women, there is no discrimination with regard to the education of daughters or their marriage. Our shastras have provided :

"Kanyapyevam Palaniya, Shikshaniyatigatant Deya Boraya Vidusha, Dhana Ratna Samanvita."

It means that the daughter also should be educated in the same way as boys, and in the fullness of time, given over in marriage to a proper groom with dowry including rich jewellery. And in my society, in the Hindu society it is enjoined :

"Yatra naryastu Pujyante, Ramante Tatra Devata."

It means that Gods bless the households where women are honoured. Women folk has been accorded such a high and exalted place in Hindu society. I do not deny that there may be hard cases: there are hard cases, where women are not treated in the way they ought to be. But if you have fallen off the ideal of your sages, your saints, your lawgivers or your leaders, they are not to blame for they have not let you down. The blame attaches to us. If you cannot approximate to the ideals of Mahatma Gandhi in your conduct but preach them in season and out of season or take his name in everything but not follow in his footsteps, the fault is not Mahatmaji's, the fault is ours. Similarly you cannot impugn your Hindu Shastras or law-givers. They have set the standards quite high and it is for you to act up to them. Notwithstanding our best efforts it is not possible to eliminate every case of injustice or hardship. Human institutions are imperfect. No human ingenuity can devise any procedure, any machinery or any agency by which all possibilities of social injustice can be completely eliminated. Let us be frank about that and let us try to realise that.

My honourable friend said in connection with the management of property that she knows of women who are better managers of property ... ,

The Honourable Shri N. V. Gadgil (Minister of Works, Mines and Power): Of men also !

Pandit Lakshmi Kanta Maitra : Exactly, of men also. I do not think there is any single married man in this House who will dispute that proposition. In the household she is the ruler: she is all in all. The tallest of us. The Law Minister or his honourable colleague will have to crouch before her however much he may thunder here. There you are ruled not by the rod, but by a strange sort of a whip, a soft, sweet silken cord made up of filaments of love which takes off all harshness and roughness, and menfolk have cheerfully submitted to her rule. She is the queen of the household. Many married people, I think most married people, would frankly admit that.

Shri L. Krishnaswami Bharathi: That is how we have cheated them.

Pandit Lakshmi Kanta Maitra: We are now going to cheat them by this Code. Do you think the greatest justice will be done to them if you simply give them right to property. Mr. Chairman, according to the Hindu notions, a girl has a distinct position, a role entirely different from that of a son. Any honourable member who has read Sanskrit literature or has any knowledge of it—I cannot make any presumption either way, whether most people know it or no one knows it . . .

An Honourable Member: The Law Member knows it.

Pandit Lakshmi Kanta Maitra : He may know it, he is a scholar. Well, in *Sakuntala* of our immortal poet, after the marriage of Sakuntala and her departure to her husband's place, there occurs a *Sloka* which is classical and which gives you in a nutshell how the Hindu lawgivers and the Hindu society look upon their girlhood. Immediately after Sakuntala left the hermitage for her husband's place, sage Kanwa said, "Today I feel relieved" :

"Artho Hi Kanya Parakiya Eva Tarn Adya Sampreshya Pratigrahita.
Jati mamayang Bishadah Prakamam Pratyarpit Nyasa Ivantaratma."

"This my heart, my inner self today has been relieved of a heavy burden and I get that inner pleasure of relief." What was that burden? A daughter in the family is like a trust deposit of somebody else's

money and just as one feels relieved as soon as that trust or deposit is made over to his rightful owner. So do I feel today having made over Sakuntala to her husband. (*Interruption*) Not in these days of law of limitation but I am talking of those days. "Nyasa", means a deposit, trust. If my honourable friend Dr. Kamath wants further interpretation, I am perfectly willing to give that outside the Chamber.

Shri H. V. Kamath : But I am not a doctor ?

Pandit Lakshmi Kanta Maitra: More than a doctor: you are doctor, philosopher, lawyer, and legislator. I have great respect for you ; you are a nice chap and above all a great patriot.

Sir, that is the conception of girls. So, if the Hindu law-givers did not give them a right of ownership equal to that of the son in the family, it was not because of any aversion, not because of any dislike but because of the simple reason that the girl is made for her husband's family; she is not to become a part and parcel of the family where she is born. That is the whole thing. And therefore no question of injustice or inequality arises. I do not know of any school of Hindu law prevalent in any part of the country where a daughter has been given a distinct share equal to that of the son in the property of her father.

Shri A. Karunakaran Menon (Madras : General): It exists in Malabar.

Pandit Lakshmi Kanta Maitra : I am glad that in the South they have got so many things.

Sreematty Annie Mascarene (Travancore State): In Travancore too, sons and daughters share equally.

Pandit Lakshmi Kanta Maitra : I am grateful for this information but all such information emerges from the South ; and if my friends from the South . . .

Shrimati Hansa Mehta (Bombay : General): Are they not Hindus in the South ?

Pandit Lakshmi Kanta Maitra: Yes, but if they are proud of all that in the South, let them not deny us our legitimate right to feel proud of our manners and customs in the North and North-east. That is my humble submission to them. I do not like this type of argument. Because some order of succession, some order of inheritance prevalent in Bombay or some other part has been found suitable there, therefore it must be bodily transplanted into Bengal and elsewhere

regardless of all considerations whether it is a plant which can grow and thrive in that particular soil. If a particular institution has been found to work very satisfactorily in the South, it must be allowed to work there ; But if it is not found suitable for the soil of the North or the soil of the East or the soil of the West, I do not see any reason or justification for forcibly transplanting it there.

In fact my one very serious objection to the Hindu Code is this: for this craze for theoretical uniformity you ignore completely variety; you have got these things in this part and those things in that part: that itself shows that in this vast country of ours, peculiar social manners and customs have developed according to the needs of particular places or areas. They must be left undisturbed. In clause 7, however, the Bill provides an overriding power by which all usages, immemorial customs which have the sanction of law should be scrapped. I think it is clause 7.

An Honourable Member: It is clause 4.

Pandit Lakshmi Kanta Maitra : I will take it on my friend's authority. Sir, this in my opinion, is highly objectionable. Clear Proof of usage out-weighs the written text of Law. This is a well established dictum.

There are diversities of customs and manners because of the diverse needs of the people that compose this vast continent. And therefore:

Veda vibhinna Smritayah vibhinna,

Nasau munir Yasya matam Na Bhinnam.

Dharmasya Tattwam Nihitam Guhayam. ,

Mahajano yena Gatah Sa Pantha

An Honourable Member: Let us all be *mahajans.*

Pandit Lakshmi Kanta Maitra: *Mahajan* does not mean a money-lender.

That is the most unkindest cut of all. That indicates the depth to which society has fallen. We cannot think except in terms of rupee or dollar or shilling or pence. Mahajan has been variously interpreted : as great men; or majority of men. Take it in whatever sense you like. ,

Veda khila Sadachar Swashya cha Priyamatmana,

Yasmin Deshe Yadachara

I do not want to weary this House with a lot of other quotations but this is such a subject that I cannot altogether avoid it if I am to convince honourable Members of the justice of my contention

based on Hindu shastras. I have to make myself clear before the House. It may reject what I say ; it does not matter; but I represent a constituency—not a purely territorial one—but the constituency of a vast body of men and women who believe in Hinduism and Hindu Society governed by the injunctions of Hindu sages of old. Sir, I represent for the time being the views of that constituency. It is true that I have been returned to this Constituent Assembly by indirect election—with four or five votes only, but I may assure the House that I have fought some of the most contested elections in the country from some of the most important constituencies. Immediately before coming to this Constituent Assembly I was representing the city of Calcutta in the Central Legislature. Before that, I was representing the Presidency Division composed of several districts with lakhs and lakhs of people, and the Presidency Division is admitted to be one of the most cultured divisions in India. I know the people. I know their pulse. My native town is a famous seat of ancient classical learning. It is my district Nadia, in Bengal, that gave the new schools of *Smritis, Tantras, Nyaya, Baishnava* Philosophy etc. I am not digressing but I shall be failing in my duty to the inheritors of this great culture if I did not try to place before the House their views and ideas with regard to these matters of the Hindu Code. I owe it to myself and to my community to give my views so that judgement may not go against us by default. Any way, Let me hurry on.

I have shown you the place, the honour, which our *Shastras* have given to our women. The famous queen Indumali was dead and King Ajah was bemoaning her death thus :

Grihini Sachiva Mittah Sakhi Priya Shishya Lalita Kalavidhan,
Karmia Bimalkhena Mritywui Harata vade King Na Ma Hritam

"Oh ruthless God of Death ! What have you not taken away from me? What mischief have you not done to me ? By one blow, you have taken away one, who was my *Grihini*—you know what *Grihini* means, the queen of the house—who was my *Sachiva*—*Sachiva* means Minister. She was my minister. Not only was she the queen of my family but my minister, my bosom friend in privacy and my devoted playmate in love."

That, Sir, is the position which our womenfolk used to occupy in our society. Therefore, it cannot be said that out of sheer greed, grouse, animosity or jealousy or whatever you call it, the womenfolk has been relegated to a position of interiority. If she has not been given a distinct

status in respect of inheritance co-equal with the son, it is because she is meant for some other family than her father's and that the property is to be settled with the persons who will keep up the family, who will maintain the lineage and preserve the sanctity of the family traditions, manners and customs and who will continue the practices and the ceremonies of the family. As soon as a girl is married she becomes integrated into another family ; and according to the Hindu conception the status of a wife in the husband's family is a most respectable status—far more respectable than the status of the girl in her own father's house. I will again quote Kalidas' Shakuntala. When Queen Shakuntala could not be recognised by King Dushyanta, who said: " I do not remember to have married you." Thereupon Shakuntala was exhorted by the Rishi to remain in her husband's House even as a maid as that was a more honourable position than to be in her father's place.

The Honourable Shri N. V. Gadgil: That is how men behave !

Shri M. Tirumala Rao (Madras : General): He was suffering from loss of memory.

Pandit Lakshini Kanta Maitra : No, he was not suffering from loss of memory. It was because King Dushanata was under a curse by which he was to forget everything connected with his marriage; not that he was guilty of a deliberate moral lapse. Amazing ignorance !

Shri B. N. Munavalli (Bombay States): What an excuse !

Pandit Lakshini Kanta Maitra : I am not the author of Shakuntala. Call it an excuse or whatever you like, I do not mind. But I quoted Shakuntala because its author Kalidas is a world Poet commanding respect all over the world : and notwithstanding all your disparagement of Shakuntala, it will remain the ideal literary master-piece of the world for all time. There ought to be some limit to which disparagement of our national institutions, culture and traditions can be tolerated. Mr. Chairman, I am reminded of a very famous passage in Plato— I cannot recall his words exactly now—but he said, in effect: "Anybody who is false to his nation's traditions, to his glorious heritage and culture is a traitor and is a person who should be given capital punishment". I do not understand the patriotism of those, the nationalism of those, who have nothing but contempt and jeer for anything that is their ancient culture and heritage.

Shri H. V. Kamath : You have misunderstood. Nobody is against our ancient cultures.

Pandit Lakshmi Kanta Maitra : We might differ on many matters in connection with this Code, but nobody's purpose will be served—neither mine, nor yours—by trying to belittle our great ancient sages. They are not coming here for applause. They do not care for your radio propaganda and newspaper Hashes. They did what they considered to be in the best interests of the Community. If today you are going to make a daughter co-equal with the son in regard to inheritance, I am afraid a good deal of complications would arise. When the girl knows that she is getting a share in her father's property, when her brothers know that their sister is a co-sharer and as such the property will pass off to some other family with her marriage, whose interest would it be to marry off the girl'? I want to know.

Shri H. V. Kamath : Her own.

Pandit Lakshmi Kanta Maitra : My honourable friend says it will be the girl's own interest to marry as quickly as possible. I feel, Sir, that such a girl will find many a pitfall lying about her way.

Shrimati G. Durgabai: You distrust her ?

Pandit Lakshmi Kanta Maitra : Not a question of distrust. The Hindu sages have provided that marriages should be negotiated in the best interests of the pair by the guardians of the pair.

Shrimati Renuka Ray : What did Shakuntala do ?

Pandit Lakshmi Kanta Maitra: I know that Shakuntala did not marry that way, but my friend and sister's interruption reminds me of a story. A man had the Mahabharata and the Ramayana recited in his house for six months. Thereafter he asked his daughter. "You have heard the story. What is the lesson you derive ?" "Well," replied the daughter, "from the Mahabharata I learn that I can have five husbands as Draupadi had five husbands." From the whole of the Mahabharata this is all that she learnt. Enquired about the lesson she derived from the Ramayana the daughter in law replied, "It is very clear. As soon as my husband dies I can be married to my husband's brother." "You know what happened after Ravana died, his widow Mandodari married his brother Bibhisana." Sir, according to Hindu Law there have been several systems of marriage. There was the Gandharva form of marriage for which we have not provided here, though we have the provisions in the Code for Civil Marriage to cover all manner of such cases. So, I say that in an ordinary Hindu house-hold, under this codified Hindu Law, you are going to bring about a change in the relationship between the various members. Is this going to make for the sweetness of relationship or peace in home life?

Babu Ramnarayan Singh : By no means.

Pandit Lakshmi Kanta Maitra : There is not going to be that sweet relationship between brothers and sisters and sisters' husbands that now exists, because after a girl is married, she will have her husband or her son or somebody else in her father-in-law's house to control the property of her father's family and there is bound to be bitterness, bad blood and jealously litigation and all the rest of it. Ultimately the family will break up. Are we going to enact a Code which will facilitate the breaking up of our households ? Will the *summum bonum* of Social life be reached when every single family is broken up and domestic peace driven away? It is for you to consider whether this should be done. I feel that these things are bound to happen.

Sir, a girl may be educated. But after her marriage when she goes to her father-in-law's house, she is being guided and dictated in all matters either by her husband or by some relation of his and it will not be in her interest to endow her with a share in her father's property by legislation here. You will say you will pass another legislation to prevent her from being dictated in respect of the property she has got from her father. If you are going to endlessly legislate in that way, in order that you may have the intellectual satisfaction of having a Hindu Code, I would leave you alone. I therefore, think that this is a revolutionary change and this should not be introduced. This does not mean that I am against making provision for girls. By all means make provision for them. Make any provision for unmarried girls. Make her marriage and her education the first charge on her father's properly. Make it absolute charge on that property so that on her marriage when she will be absorbed in the family of her husband, she will be divested of her interest in her father's property. But that is not what you are doing. You talk of equality of sex, justice and fairness but are allowing the girl the right to inherit not only her father's property equally with the son, but also to share her husband's property or father-in-law's properly. This is equality with a vengeance. The girl should not get property from both sides. This will also lead to further fragmentation of property.

Shrimati G. Durgabai: The boy will get a share of his mother's property ?

Pandit Lakshmi Kanta Maitra : A daughter whether married, unmarried or widowed will get her mother's property. Let my

honourable friend read the Hindu Law. Even as it is under the Hindu Law, all categories of daughters are entitled to *Streedhana* property.

Shrimati G. Durgabai: No, no, no, no.

Pandit Lakshmi Kanta Maitra : I say, yes, yes, yes, yes. Thus the daughter is provided according to the present Hindu Law. I cannot go on correcting the misapprehensions of others. The Hindu law is there. The members of the legal profession know it. I need not labour the point I believe, that there is sure to be more fragmentation. This will inevitabily lead to increased testametary disposition and consequent litigation and ultimate ruination.

An Honourable Member: Already there is fragmentation.

Pandit Lakshmi Kanta Maitra : Yes, but two wrongs do not make one right. Because there is fragmentation already, is no argument for making provision for further fragmentation in the shape of more shares to property.

Sir, in this field of inheritance, another innovation has been introduced and I think that is the most devastating of all changes.

Shri B. Das : That is not the principle of the Bill. You can drop it.

Pandit Lakshmi Kanta Maitra : What is the principle of the Bill? Shri B. Das ; I am referring to partition and that is not the main principle.

Pandit Lakshmi Kanta Maitra : The system of inheritance is the backbone of the Bill. Under this Bill you are going to scrap the Mitakshara law. Make no mistake about it. The right to property by birth and survivorship, which is the basic foundation of Mitakshara law, is going to be swept away. This Mitakshara system of law has been governing the country for hundreds of years till there was evolved in Bengal the *Dayabhaga* law founded on the principle of natural justice and affection. Many of my friends who are supporters of the Bill have told me that I should be the last person to oppose it inasmuch as it introduces the principle of inheritance enunciated in the *Dayabhaga* law of my province. My reply to them was that that was no satisfaction to me. I do not want even if the well-meaning Social Reformers in India wants that that system should be adopted. Even if a superman or dictator comes and tells me: 'Look here, the law of inheritance in Bengal should be made applicable to all India', I would be the first man to raise my voice of protest against it. The

old system has stood the test of time. The change might suit my province, but not all India. I do not want that this *Mitakshara* law of inheritance should be scrapped in favour of one which is neither the *Mitakshara* law of inheritance nor the *Dayabhaga* law. It is a hybrid mixture of both which is conducive to the welfare of none, tending to bring about the disintergation and downfall of Hindu society as it will completely unsettle a well settled order of things.

I think I have exhausted the patience of the House and must bring my speech to a close. (*Honourable Members* : 'No, no') I have dealt with inheritance, I have dealt with marriage. I feel that those two branches of Hindu law which are sought to be drastically amended should get fuller consideration. But it will be a tragedy for India, for the Hindu society, if in the name of reform, you uproot the Hindus from their safe and ancient moorings which have protected them from the stress and storm of centuries. Let me again repeat that our Shastras, besides making elaborate provisions for all matters of social life, left a wide field to well-established local customs and usages. They have been very salutary in their effect, as stabilizing forces in society. If we ignore them and make a fetish of codification we will cast Hindu Law into a mould absolutely inflexible, rigid and cast iron; we will be importing into it unncessarily a character which never belong to it. We will be transforming it into something, which will never be able to adjust itself to the needs of times, as it has been in the past.

Sir, before I conclude, I will touch on the argument which has been advanced here also, but which has been very lightly brushed aside by those who do not like it. It has been argued—and I believe perfectly rightly—that this Legislature is not competent to deal with it.

Shri L. Krishnaswami Bharathi: Legally incompetent ?

Pandit Lakshmi Kanta Maitra: Yes. I feel that it is not competent. In any case, if you take shelter behind legal formation, I will tell you, morally you have absolutely no justification for passing this Code. I know this objection was raised not only from people like us, but by people very highly placed in the political life of this country, by people with high political stature ; for instance, by a man of the eminence and standing of the Honourable Dr. Rajendra Prasad, the President of the Indian Constituent Assembly, the sovereign body by which in season and out of season, we are all swearing. I want to know whether or not his views deserve our best consideration. Personally, I have very great respect for him. He is not only the uncrowned

monarch of Bihar, but he is one of the undisputed leaders of India. Dr. Rajendra Prasad has given the clearest possible indication. He knows not only the people of Bihar but Bengal as well and also other provinces. He sat up his practice in Calcutta and upto the middle of his life he lived in Calcutta. It is not for nothing that he gave the warning that the Constituent Assembly constituted as it is to-day, ought not to discuss a legislative measure of this nature. I can speak for myself. I cannot speak for others. I honestly feel that I have absolutely no right, legal or moral to be a party to any measure, any legislation, which is not absolutely necessary for the day to day administration. I was returned to the Constituent Assembly with four votes only. I can honestly declare here and now that when I sought all those four votes from the Members of the West Bengal Legislative Assembly, I never promised them that I would give them the right of divorce. Neither did they ask for it. I declare that I never promised them that I was going to scrap up the law of inheritance. I never told them that I was going to the Constituent Assembly to create a fresh Portfolio and a Ministry of Marriage, because I feel that such an institution will be necessary here in the Central Government, if this Bill goes through. Look at the formalities that have been provided here. So, personally speaking, I feel that I have no right to give my assent or dissent to this. I can only tell the House that I am not competent, because I had no specific mandate from my Constituency to do it. When I came in through the General Elections there were clear issues before the Country such as the attainment of the freedom of the country and all the rest of it; and the last time we came here, we were enjoined only to draw the Constitution of India. Therefore, it might gratify our vanity that we as members of the sovereign legislature of the land are competent to enact such a legislation but the claim is shorn of all moral content whatever. Nothing would have been lost if we had deferred the consideration of this Bill to some future dale after the next General Elections. I emphatically maintain, Mr. Chairman, that the time chosen for its passage through this House has been most importune. After the attainment of independence, problems after problems have been confronting the National Government. Have we been able to solve them ? We have not. Are we in the country very popular ? By 'we' I mean 'all' including that side. No. Frankly, because we raised expectations which we have not been able to fulfil. That may be due to a variety of causes over which we have had no control; that may be due to an interplay of forces, which took us unawares, absolutely unprepared. But throughout the country you find

simmering discontent. As a matter of fact, I do not feel inclined to disclose my identity as a member of the Legislature, of the Constituent Assembly, when I travel in a railway compartment, because the moment they come to know that, they start vigorously criticising us.

Shri B. L. Sondhi (East Punjab: General): Then go by air.

Pandit Lakshmi Kanta Maitra : I have started going by air. Quite true. There also I fare no better. I am not joking. I really feel that the country has become sick of us, disappointed of us because of our failure to do anything real for the common man. Hitherto there had been the Kashmir question. There is the question of commodity prices. Yesterday we had a brilliant performance with the unfortunate—enhancement of post-card rate and the price of cloth.

Mr. Chairman : The honourable Member may confine himself to the Bill.

Pandit Lakshmi Kanta Maitra : I am only saying that the rise in prices of commodities, labour strikes, the Communist menace, refugee problem etc. have been too much for the government. Is this the time for us to go on with this luxury of Social reform legislation, and a very highly controversial legislation at that ? It is sure to give rise to the bitterest acrimony; and as a matter of fact, it has already brought about a lot of acrimonious controversy. I believe honourable members have been already Hooded with literature (*Interruption*). Of course, from the Anti-Hindu Committee, and similar societies and associations from Calcutta and elsewhere. I have got protests from the Women's Association in Poona, I have got protests from Women's Association in Bengal, the members of which come from the highest aristocracy in the land. I have not known of any Bar Association in Bengal which has not protested against this. I have not known any Bar Associations which have supported this Bill. I have in my possession perhaps the whole literature that has been circulated so far in connection with this Bill. I have classified it and the dead weight of opinion is against it, qualitativley and quantitatively. I again say that the time is not opportune. At a time when, according to our Prime Minister's appeal we should close our ranks, put our heads together, devote all our time and energy and work in amity and concord so that we may solve the problems of the land, we should not give another cause for disruption, another cause for discord or grouse or discontent in the country. I do feel nothing is to be lost if we shelve this Bill for the time being. If that is not done, then, of course, I promise that I will have to oppose this Bill at every stage. I oppose this Bill, because I feel that it is a wholly unwarranted measure and that there has been

no demand in the country for a legislation of this kind. I oppose it because I feel that in all social legislations we must go slow and that we cannot bring about large scale social reform by legislation alone. The reforms will have to come from within by force of public opinion which has to be created inside the society. Thirdly, I oppose because of the most irregular manner in which this Bill is sought to be passed in this House. I oppose because I feel that I am not morally competent to discuss this Bill and pass it in the Legislature as it is constituted at present. I oppose this Bill because I feel that it has brought in radical changes in the concept of marriage, in the scheme of Hindu Law including the law of inheritance and succession. I oppose it because I feel that it will create endless and needless complications including such things as Civil Marriage Register, Sacramental Marriage Register, Marriage Notice Book, Director General of Marriages, Registrar Generals of Marriages, Ministry of Marriages, and so on and so forth. I oppose it on the further ground that it would give rise to bitterness, disunion and discord in our families leading to the disintegration of society. I oppose it on the further ground that it is undemocratic inasmuch as a vast body of opinion in the country is against it. In view of all these, I feel I am morally called upon to oppose this Bill with all the force at my command.

With these few words, yes, these are few words in view of the enormity of the legislation, In view of the gravity of the issues involved ; these are few words in view of the opposition it has roused and the repercussion it will have on the society. Anybody who really wants society to be protected against this menace coming from the legislature cannot but be articulate and discursive; he has to devote time to the full and dispassionate consideration of things ; he must give his humble bit of advice of caution to the legislators so that they may not drive us along the wrong path and that the society may not slip down the declivity into ruin.

* **The Honourable Shri N. V, Gadgil**: I have been somewhat provoked to participate in the discussion on a Bill which undoubtedly is revolutionary. I have heard with the greatest respect the speech of my honourable friend with whom I had the honour to work in this House for more than ten years. If there is anything which distinguishes him most, it is his earnestness which is only equalled by his great eloquence. I entirely agree with him that in matters of social reform one must go slow. On that point, I have not the slightest doubt. But this Bill has proceeded so slow that some of us have rightly

*C.A. (Leg.) D., Vol. II, Part II, 1st March 1949, pp. 1015-20.

complained that it has not been passed much earlier. As far as I know, this Bill or at least the main provisions of this Bill have been before the house or its predecessor and before the country including the members of the Bar for nearly eight years. It cannot be said by any stretch of imagination that this Bill has taken either this House or the country by surprise.

I well remember in 1945, at the time of the general elections, I was opposed by certain groups precisely because I stood for social reform, because I stood for the codification of the Hindu Law. The very fact that I was elected and I am still here is an indication that I carry the views of my constituency.

A point has been made by my honourable friend Pandit Maitra that this House is not competent to pass a legislation of this character. I think this objection I have heard so often in the course of the last fifteen years that every time when a social reform Bill was before the House, the same objection was raised. With what result, everybody knows. If this House is competent to pass the Constitution for free India, I fail to see how it is not competent to pass this legislation. As if to reinforce the agreement with a personal appeal, my honourable friend Pandit Maitra referred to the views expressed by Honourable Dr. Rajendra Prasad. I have, and, in fact, every person in this House has, every respect for Honourable Dr. Rajendra Prasad. Yet, there is a duty which every member of this House owes to his conscience and to his constituency and to this great country in which he lives above everything, not merely as a legislator, but as a person who visualises the reconstruction of Hindu society and he would be failing in his duty if he were to take into consideration only the personal views of one eminent person or another eminent person. When I say this, I say it in no spirit of disrespect, but because I feel duty is higher than any respect for any individual.

The main point is, has the time not come for the codification of the Hindu law ; has the time not come for the introduction of certain reforms in the system of marriage, adoption, inheritance and all other things which go to constitute what is generally known as the Hindu Law. The sources of Hindu Law are so many. I do not want to dilate on this and I do not want to take much time of the House. But there is a clear case established that there must be some uniformity, some definitions about the interpretation of the law. If the law is not clear, if the law is not uniform, the stability of society suffers. If we have different interpretations of a particular text by half a dozen High Courts, I think the time has come when all this must be put an end to.

Further, my honourable friend suggested that we are attempting to destroy Hindu Society. My own feeling is that, here are about 290 persons who are in close contact with Hindu Society ; here we can come together, ventilate our views and come to some agreement and adjustment and pass a legislation calculated to secure the further progress of Hindu Society. When Manu, Parashara and Yagnyavalkya wrote their *smritis,* they had not the benefit, I should say, of any legislature. They were undoubtedly great men ; but I do not think that the race of great men died with them. On my left, I find a person so great in scholarship and character that it would not be wrong on my part to compare him with some of the old Rishis and law givers. If today, in addition to his own wisdom and learning, he requisitions the help and co-operation of all the 290 persons, I think his hands are strengthened and his views ought to appeal to us.

The main point, as I said was, has the time come for certain reforms and has the time come for the codification of Hindu Law ? If the time has come, it makes no difference whether one man promulgates a Code and the country accepts it, or whether it is accepted by the process of discussion in a democratic manner and the country accepts it. The main point is to judge it without passion, without prejudice and without entering into any extremist considerations. We have in this House to judge it purely on merits and not on sentimental grounds.

After all, what is it that is in this Code ? Except for the question of inheritance, there is nothing to which we have not listened so often and to which we have not agreed substantially. My own view is that there are two important things on which the controversy is centered, One is marriage; the other is ending of the co-parcenary in Hindu Law. So far as marriage is concerned, there is nothing revolutionary in this. In these days, when everything is pointing towards State control more and more, and when we are talking of nationalization, I think the only sphere for private enterprise is marriage.

Mr. Naziruddin Ahmad : Let that also be nationalised !

The Honourable Shri N. V. Gadgil : Now in this Bill a golden mean is struck. The entry and exit in this sphere is so regulated that a modern man coming from the West would certainly laugh at our backwardness. He would say if marriage is a matter which is calculated to secure the highest happiness for both, then one of the grounds for divorce must be incompatibility of temperament. Have you gone up to that ? The grounds in the Bill are very narrow. In fact, I say that

this is a very moderate measure. You do not expect a wife to carry on with a lunatic, a leper etc. and there is nothing in this Bill which runs contrary to the provisions of Smritis or which is inconsistent with the genius of Hindu society and culture. Most of us know the *Smriti.*

नष्टे मृते प्रब्रजित, क्लीबेच पतिते पतो । पतिः अन्यत् तु नारीणाम् विधीयते ।

These are the grounds given in the ancient text and if something approximating to that is not available today in Hindu society, it is because we have become stagnant and all these dynamic urges for progress have ceased to operate. After all who, and to what extent of Hindu society will this effect? Speaking for my own province, 95 per cent. have already some sort of divorce, not as a matter of law, but as a matter of custom. It is only the two or three per cent. of people of the upper classes who are opposed to it. But taking a fair view, the educated section is completely for it.

On the one hand I agree that divorce must not be made very cheap and that incompatability of temperament should not be one of the grounds. But at the same time, marriage should not be considered a life sentence, if it virtually comes to that. After all, just as marriage has an individual aspect, it has also a social aspect. If the two spouses do not agree, then the bickering and the bitterness and the lack of harmony is not confined merely to the precincts of the family but it has wider application and effect, and society and the general atmosphere round-about also suffer. If it is the desire of any law giver that whatever piece of legislation he wants to get through it must have the capacity of securing the results contemplated then we have to judge whether what has been all along with us has really given us the result we have asked for. It is a matter for introspection. If today we are providing some way out from wedlock in order to make people, who are readily not happy to get out of it, we are only doing what I think is our social duty.

So far as marriage is concerned, I fail to see how we can object to marriages between persons belonging to different castes. In the year 1949, it would be a sad commentary on our progressive outlook if a single person should stand up here and say—well, marriages between persons belonging to different castes should not be legalised. In free India, I think there is only one caste, the caste of free men : and one religion and that religion of humanity. (*Shri H. V. Kamath,* 'And free women !'). This reform has been before this country so long that

those who feel that this means dissolution of Hindu society, are enemies of progress ; such a Hindu society in my opinion ought to be dissolved. What is this that a man should be called untouchable because he is born in a particular caste. I have never seen a boy born with a broom : I have never seen a boy born in a Brahmin family with a *Yagnopavita,* nor a boy born in a Marwari family with a *Taraju.*

जन्मना जायते शूद्रः । संस्कारात द्विजोच्चते विद्यया याति विप्रत्यं त्रोभिः श्रीतयोच्चतो चवे ।

All are born *Shudras* and after *Sanskara* a man attains higher status and when he has gone through the different stages of learning and accomplishment he becomes a *Shrotriya,* Here is the real spirit of Hinduism, not the spirit which is evinced by some of our old Sanantanic friends here and outside. If the object of this great country, as has been often given out to be is to make a classless society, then we must see to it that proper institution, both social and political are evolved and enlarged. I therefore consider that whatever recommendations are made in this Code as regards marriage are not only absolutely necessary, but they do not go far enough. But as I agree with my honourable friend, Pandit Maitra, that in social mailers we ought to be slow, I am willing to accept this position for the time being.

The most controversial part of the whole thing is the elimination of the coparcenary from Hindu society. Something was said of public opinion. Something was said of the press and the bar. In my own province there is an association called the 'Dharma Nirnaya Mandal', In this Mandal are to be found Mahmahopadyaya Tarkatirth Vidyavachaspati men of high learning and scholarship. Very recently they have passed a resolution and expressed views on the proposed Hindu Code :—

> "The Dharma Nirnaya Mandal takes this opportunity, when the Hindu Code is on the anvil for consideration in the present session of the Assembly, to express its appreciation of the general liberalizing influence which is brought to bear in the framework of the present code. The Mandal sees this influence clearly in the removal of—
>
> (a) distinction regarding joint ancestral and self-acquired properly:
>
> (b) different treatment of sons and daughters :
>
> (c) technical difficulties in the interpretation of Women's Estate; and
>
> (d) distinctions between *Mitakshara* and *Dayabhaya* rules of inheritance.

The Mandal believes that the above reforms will go a great deal to minimise court litigations and foster national spirit and engender a feeling of oneness by this one Hindu Code being made to apply to all Hindus in the whole of India. The Mandal notes this as the first attempt ever made in this direction within historical memory.

This is the reason, why in spite of several differences in minor details, the Mandal heartily supports the present measure as it is."

Babu Ramnarayan Singh : What people do they represent ?

The Honourable Dr. B. R. Ambedkar: They are most learned and orthodox men.

The Honourable Shri N. V. Gadgil: But enlightened orthodox.

Now, I come to the question of joint Hindu family. The house will no doubt agree with me that a progressive society ought to change with the change in times and that it should evolve appropriate institutions both of property and of laws. The time has now come to assess dispassionately the merits of the joint family system, both as an institution to secure family happiness and as an institution of property. Even today, if somebody gives me convincing arguments about the benefits of the joint Hindu family, I am prepared to hear him, for I am not dogmatic—I feel that truth is the real thing, not prestige for ones own views.

4 P.M.

Now, taking the first point, has the joint family system secured happiness for the individual members of the family ? I am not speaking what the daughters-in-law feel when they have to live in a big family. What I have seen and heard definitely goes to show that so far as happiness and harmony are concerned, this institution has ceased to be of any use or value. After all there is nothing new in this. If out of 32 crores of Hindus nearly 5 crores are already governed by *Dayabhaga* and if that system has worked well, at least one cannot say that it is absolutely bad and that we must even think of it. (*An honourable Member:* It is absolutely new.) That it is new there is no doubt. But what is the society that we are visualising for the future ? It is of a patriarchal type ? What is exactly the nature of the society you want to reconstruct ? As I understand, that society is going to be one in which there will be equality of status and equality of opportunity because those are the two phrases we have incorporated in the Preamble of the Draft Constitution. I think with that Preamble the joint family property system is not consistent.

The real trouble seems to me to be—after having listened to the speeches of various members—what is being given to daughters. But as an institution of property the joint family system must go, because it concentrates wealth. People will ask me, "Well, has it or has it not done something good?" I at once agree that it has done some good, but so far as property aspect is concerned, so far as social credit aspect is concerned, other alternatives have already come into existence, such as co-operative societies and the joint stock companies. Therefore, there is no need of this institution so far as the creation of social credit is concerned. As a mechanism for business other

alternatives have come into existence and by experience we have found that they give better results. Therefore, we are not destroying anything without putting something in its place; we are not leaving the whole society in a sort of vacuum as it were. What has outlived its usefulness is being liquidated so that new India will go ahead with greater speed and may attain greater progress.

Now, the real trouble as I said is about some share being given to the daughter: whether it should be half or whether it should be something less are details which can be discussed later on. But one point is certain and that is that the daughter must get some share. In free India if you are only going to say that—

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवता

and then say that she should either go to a court of law or ask for maintenance, I say it is not fair.

My own feeling is that some difficulties may arise at the beginning; when new institutions come, when new thoughts generate; society does take some time to adjust itself. The question is not whether these difficulties are great or small: the relevant question is whether the new arrangement proposed is good or bad. If you are convinced that it is good, naturally there will be some difficulty in adjustment. We must not mind the difficulty at all.

It has been suggested that as soon as the marriage is over the bridegroom will start trouble, by suing or otherwise, for the share which his wife has got from her parents. It would be welcome to lawyers. Well, when we are trying to nationalise as much as possible, what little will be left will not be of great consequence, that people would go to the court for a small share of it. In times to come there will be little left both for the boy and the girl. Even if it leads to litigation, does it mean that we should not do justice? Because a good tiling may be abused by a few, does it mean that it should be denied to all? It is for the House to decide. It is high time that the general talk of equality of sex must be followed by equality of ownership of property. If we do not do that we will have to face the charge of hypocrisy.

My honourable friend Pandit Lakshmi Kanta Maitra has prophesied all sorts of trouble for the great Hindu society. Such prophets have always been there in the past and they have always proved false. I have not the slightest doubt that Hindu society has got such a flexible nature that it has absorbed various cultures and if it has lived through

the ages successfully it is because those who guide the affairs of the society had in time suggested changes suitable to the times. That is the reason why it has survived till now. Here is an attempt to bring the law in line with public opinion. What the law does is that it consolidates the public opinion but public opinion being dynamic by its very nature it goes ahead every now and then. It is like a horizon which recedes the nearer one goes to it. Modern society by its very nature progresses very quickly. Therefore, we have to adjust public opinion and the law of the land. There are other means by which it can be done, like legal fiction or equity but the best and the honest way is to do it by a piece of legislation. I think here is an attempt in that direction. Although I agree that it is revolutionary, it is a planned revolution and therefore it is going to be a success.

*__Mr. Naziruddin Ahmad :__ I have but a short time at my disposal. *(Dr. B. R. Ambedkar:* Why? You have your own time.) I mean comparatively short time for the enormous subject which I have to deal with and I hope the House will give the subject that amount of thought and attention which I have given to it (*An honourable Member:* What have you to do with it ?) At the very outset I am asked what I have to do with it. I say I have every thing to do with it. Two very enormous changes have taken place in the country. One is that we have decided to shed our communal character and the other is that we have decided to impose upon ourselves the benefits of joint electorates. Can any honourable gentleman in this House deny the right of a Muslim to' think in the same way as a large part of the Hindus think? After all we have to live with Hindus. In West Bengal they form 80 per cent and we have to live with them and think with them. Come with me to West Bengal. Pandit Maitra put the case of the opposition in Bengal very mildly when he said that there is serious opposition to this Bill ....

__Shrimati Renuka Ray :__ There is equally and more serious support.

__Mr. Naziruddin Ahmad :__ Come with me to West Bengal. I am not speaking on behalf of the orthodox section. With regard to that aspect of this legislation I have nothing to do. I have certain serious questions to raise before the House which have not been raised up till now. The objection in Bengal is so serious that if anybody undertakes a journey to ascertain public opinion—(*Interruption*) I mean intelligent and advanced public opinion—if anyone will go there, if anyone will make a journey from town to town in West Bengal, he

* C.A. (Leg.) IX. Vol. II. Part II, 1st March 1949, pp. 1020-30.

will be faced with opposition to the Bill from the most intelligent section, the most enlightned section (*An honourable Member:* Which the Honourable Member has not done). I believe the interruption is not based upon a thorough consideration of the subject. I submit that it will be agreed that the members of the bar are not very conservative people

Shri L. Krishnaswami Bharathi: Most of them are orthodox and conservative.

Mr. Naziruddin Ahmad : They are not perhaps the orthodox section. . . .

Shrimati Renuka Ray : What about the opinion of Mr. Atul Gupta recognised as one of the most eminent lawyers and chosen by Congress for the Partition Committee?

Shri Krishna Chandra Sharma : Does the lawyer line on precedents !

Mr. Naziruddin Ahmad : In spite of these interruptions I submit they are not the orthodox sections. You go to any bar library and you will find that this Bill is opposed tooth and nail. . . .

Shri L. Krishnaswami Bharathi : Because their occupation will be gone.

Mr. Naziruddin Ahmad : I do not agree that you eliminate the profession of the bar by this Bill. You are introducing complications which you can not think of. On the other hand, I submit that the lawyers in a different capacity, in a professional capacity, will thank this House for introducing this controversial measure. Four judges of the Calcutta High Court, four advanced Hindu judges of the Calcutta High Court—one of whom now adorns the Federal Court Mr. B. K. Mookerji have said—that the law is already well settled, the law is well known. The law may be different here and there but that is due to various reasons into which I need not now go. The law is well known.

Shri A. Karunakara Menon : If the law is so settled why Law reports every week?

Mr. Naziruddin Ahmad : It is because I feel that my honourable friend does not realise the subtleties which underlie the law. In fact precedents are necessary. You cannot cover any possible case in anticipation by legislation. So precedents are necessary. They illuminate difficulties and they are helpful in deciding cases in future. The moment mankind gives up precedents, specially in the domain of law,

they will cease to be intelligent animals. That is why I submit that lawyers who are not orthodox people are opposed to this piece of legislation, not because it will deprive them of their food . . . . . .

Shrimati Renuka Ray : What happens when limited estate for women goes out in regard to litigation in Bengal?

Mr. Naziruddin Ahmad : I only hope that my honourable sister Shrimati Renuka Ray did represent the ladies of Bengal. (*An Honourable Members:* She does.') She is only one star in the whole of West Bengal. I will cite at least a dozen stars in opposition who are equally well known as Shrimati Renuka Ray. She is only one guiding star leading the case of the Hindus. . . .

Shri R. K. Sidhva (C. P. and Berar: General): The only star.

Shrimati Renuka Ray : There are hundreds of women who have gone to Noakhali and other places. There are many guiding stars in Bengal: these women social workers are all leading stars, but they all support the Hindu Code.

Mr. Naziruddin Ahmad : I submit that my honourable sister has not the experience of litigation. He has not lived in the law. If he had lived it he would have seen the enormous possibilities. . . .

Honourable Members : Say 'she'.

Mr. Naziruddin Ahmad : . . . . . for a good thriving business. There is no difference between he and she. According to the latest standards 'he' includes 'she'.

I submit ladies should no longer be called "she", but they should be called "he".

The lawyers are against this measure. Their family system will be seriously disturbed. They are very much averse to the Bill. (*An honourable Member.* 'Are they afraid about their profession?') No, they will get more cases. I assure the house on behalf of the lawyers to which profession I have the honour to belong that for their personal interests they should all welcome it. (*Shri L. Krishnaswami Bharathi:* You are mistaken). I am not mistaken, I have lived in the law much longer than my honourable friend has done. I have taken part in litigation. The divorce provisions will introduce endless litigation and will lead to endless complications and endless difficulties for many families and more misery for women than men.

Coming straight to a very important point, I have to submit before the House a very serious state of, affairs in connection with this Bill.

The bill was lastly rushed through the Legislature on the 9th of April last. We were asked by our fair sisters not to oppose the Bill at that stage; it was considered to be so important that no detailed attention need be paid to it—it should be passed. So, at the last hour of the last day we agreed to allow it to be considered. I raised my feeble objection from the Hindu point of view. Am I raising any objection from the Muslim point of view? Certainly not. So, my declaration that the objection was from the Hindu point of view should not have elicited any surprise or any laughter. It is from the Hindu point of view that I am speaking. My learned sister the other day asked me, "Why is it that you are denying to your Hindu sisters rights which you are giving to your own sisters"? That is a very cardinal question. May I reply? My reply is this, that you cannot give the same kind of food to different kinds of persons. You have got to judge the position of a Hindu woman as the Hindu law conceives of it. You have got to consider the position of a Muslim woman as the Muslim law conceives it. We are not here to question the wisdom of one system or the other. I find there are two kinds of Members here: some vegetarians and some non-vegetarians. Would you give meat food to a vegetarian and if anybody gives vegetable food to a vegetarian would you accuse him of partiality? (*An honourable Member:* 'Is it logic? Very strange logic.'). The argument is as logical as the question put to me by my sister Shrimati Renuka Ray—it was not logical. You cannot give the same kind of food to two different kinds of persons ; they were indeed born and bred differently.

The Bill was rushed through the House on the 9th of April. The Honourable the Law Minister has given us a revealing passage in the Report of the Select Committee. He has made a plain admission that the Bill had not received any consideration on its merits before it was taken to the Select Committee. That was very wonderful statement to make. Originally the Bill was supposed to be well-drafted—a good Bill—it passed through the Legislature on the 9th of April and was taken to the Select committee and then comes the realisation that it had not received technical or departmental consideration. Why is it, may I ask, that although it had not received technical or serious departmental consideration at the hands of the Law Ministry, it was rushed through at that stage? (*An honourable Member:* 'We were very near 1st April'). That may be; it was very near the 1st of April and that probably has something to do with the rush. Probably no serious business was meant, some sentimental piece of literature had

to be passed through in order to satisfy our fair sisters. The Bill is driven more by "lady sentiment" than by a consideration of the necessities of the case. The Department then undertook a most unprecedented task. They came to the conclusion that the Bill was not properly drafted, that it had some defects, that it had to be recast. The Bill was composed of several individual chapters with separate numbering and separate definitions, entirely separate from each other. The Legislative Department thought that this was a blemish and that the Bill should be recast with continuous numbering and the whole blended into one complete whole.

I submit that the moment the Legislative Department came to that conclusion, then was the time to withdraw the Bill and to frame a new Bill which the Ministry was able to accept; and present that as a new Bill. Instead of that the department went through a process of legislative drafting with which I was never familiar. The whole constitutional history of India and abroad will never offer an example of a Departmental Bill being prepared after a Bill is presented and after sending it to the Select Committee. Shri Ramnarayan Singh yesterday asked as to what authority the Drafting Committee had to make a new Bill altogether. (*An honourable Member:* 'It is not a new Bill.') I shall be in the unfortunate position of being able to show that very substantial changes have been made. Although the Honourable the Law Minister yesterday tried to avoid answering the question, still he had to admit in the end that he did not make any changes, that it was the Select Committee that made the changes. I am in a position to demonstrate before the House that the changes were very serious, very radical, and not unsubstantial changes.

Shri L. Krishnaswami Bharathi : Sir, on a point of order. If the honourable member wants to base his argument for re-committing the bill to the Select committee on the fact that it was some other Bill that was considered and not the Bill sent to it, that point has been covered by Mr. Speaker's ruling ; he need not emphasise on that point. If he has other reasons, he is welcome to do so; he is speaking on his amendment for re-committing the Bill to the Select Committee. But if he stresses his argument, namely, that the Bill considered by the Select Committee was not the bill sent to it by this House, then that has been covered by the ruling of the Chair which declared that it is the same Bill.

Shri T. T. Krishnamachari (Madras: General) : That might be an argument for rejecting consideration.

Shri L. Krishnaswami Bharathi : If that is so, then that point has been thrashed out so much that if he were to argue it again it will merely be taking the time of the House. That aspect has been so thrashed out and arguments have been advanced. He is merely repeating them. I would submit to you, Sir, that we can hear any new arguments but we are not prepared to hear the same arguments being repeated by him.

Pandit Lakshmi Kanta Maitra : May I put in a few words in connection with the point of order raised by my friend Mr. Bharathi? He said that the honourable member Mr. Naziruddin Ahmad in his amendment for re-committal to the Select Committee had been raising the grounds which had been covered by Mr. Speaker's ruling. I do emphatically maintain and the House would also agree that every honourable member is entitled, without disrespecting the ruling of the Chair to give the reasons which lead him to recommend the Bill for recommittal to the Select Committee. There is no point of order as such involved in it. It is a member's legitimate right to place all arguments which he can for making a motion for recommittal to Select Committee.

Mr. Chairman : I think there is no point of order in this, because he is speaking for his amendment that the Bill be re-circulated for purposes of obtaining further opinion thereon and he is just advancing arguments how the Bill has changed ; how the original Bill has been altered in the Select Committee.

Mr. Naziruddin Ahmad : I submit, the real difficulty of my honourable friend is not there. I believe that an intelligent man as he is, Mr. Bharathi of all persons, is well aware of the real difficulties of the situation. That is why, I submit, he most intelligently wants to intercept me by Mr. Speaker's ruling. I must make a declaration at once here that of all persons in the House I have the greatest respect for the decision of the Chair.

Pandit Lakshmi Kanta Maitra : Why do you go into that ?

Mr. Naziruddin Ahmad : I am merely saying that I accept the decision of the chair. I am not going into that.

Pandit Thakur Das Bhargava (East Punjab : General): You must go into that. Why not ?

Mr. Naziruddin Ahmad : But what was the ruling ? The ruling was that the consideration of the Bill was not out of order; in fact, the ruling was that the members of the Select Committee had the

old Bill and the Departmental Bill and they must have taken the whole thing into consideration and on that basis the technical objection which I had raised that the Departmental Bill above was taken into consideration and not the original Bill was well founded. That is the effect of the ruling, and that is the ruling. My present purpose would be now to show that although the members of the Select Committee had the original Bill before them, although they had the Departmental Bill before them, although they had both, although they had the opportunity of comparing the two and seeing what glaring interpolations were made in the Departmental Bill, they did not do so. They discharged their duties, I should say with respect in consideration of the importance of the subject, in a somewhat hasty manner and imperfectly and rather perfunctorily. This was the point of view that I was emphasizing.

An Honourable Member : You are inciting the Law Minister to violence !

The Honourable Dr. B. R. Ambedkar : I would not do any such thing, because I have plenty of arguments to meet Mr. Ahmad.

Mr. Naziruddin Ahmad : I submit the Honourable the Law Member is fully conscious of the situation, I have a little suspicion, that he knows by this time without any doubt what serious changes have been made in the Departmental Bill.

The Honourable Dr. B. R. Ambedkar : I do not know. I am waiting to hear, though.

Mr. Naziruddin Ahmad : The Honourable the Law Member said, "There have been certain serious changes, but I did nothing. It is the Select Committee that did so. The Departmental Committee did not make any changes." In fact yesterday I put a pointed question which he kindly answered, namely, whether the Departmental Committee that was set up was instructed not to make any substantial changes. That was due to the fact that I find in the report of the Select Committee a definite declaralion by the majority of the Select Committee : "This revised draft does not make any substantial changes in the body of the original Bill." It was this declaration which I understand was also given to the Select Committee by him that no substantial changes have been made; it was on this basis that, although they had the original Bill with them, they did not look very carefully and compare them with a view to finding out whether any substantial changes have been made.

Shrimati Renuka Ray : On a point of order, Mr. Chairman. Are matters which happened in the Select Committee, are those details allowed to be brought up in this manner?

Mr. Naziruddin Ahmad : With regard to this point of order, I have already to submit that. . . .

Shrimati Renuka Ray : It is a point of order which I would like you, Sir, to decide.

Mr. Chairman : I think there is no point of order. It is only Mr. Naziruddin Ahmad's inference that the Select Committee did or did not do such and such a thing. I think the honurable member will not cast any aspersious on either the Select Committee or the members of the Select Committee. He may advance his arguments.

Pandit Thakur Das Bhargava : The manner in which the Select Committee behaved is certainly open to the criticism of the House.

Mr. Naziruddin Ahmad : I submit. ....

Pandit Lakshmi Kanta Maitra : You are right, Mr. Chairman. Without casting aspersions he may advance agruments.

Shrimati Renuka Ray : But he is casting aspersions.

Mr. Chairman : They are at best inferences.

Mr. Naziruddin Ahmad : Sir, my inference is that members of the Select Committee were definitely assured by the Honourable Minister

Shrimati Renuka Ray : I object to this Sir. This is casting - aspersions. These inferences are casting aspersions.

Mr. Chairman : Every honourable member is at liberty to draw his own inference.

Mr. Naziruddin Ahmad : I submit, Sir, it can be contradicted at once by any member of the Select Committee.

Shri L. Krishnaswami Bharathi: No; certainly we cannot con tradict. But since you are inviting a contradiction, I as a member of the Select Committee, do contradict. I say that we went through the whole thing and we were satisfied that

Mr. Naziruddin Ahmad : You are making a statement

Shri L. Krishnaswami Bharathi : You wanted a contradiction. And I contradict.

Shrimati Renuka Ray : Mr. Chairman, I would like to say that because inferences are made and aspersions are cast, the members

of the Select Committee are put in a very awkward position, because then we have lo bring forward all that happened in the Select Committee, which we are not supposed to do here ?

Mr. Chairman : Order, order. I would request the honourable member not to make any aspersions against the members of the Select Committee; he may address arguments as to how the Bill has been changed.

Mr. Naziruddin Ahmad : I would not willingly make or cast any aspersions on any honouruable member unless it is involved in the very exposition of the point. If anything was badly done which affects the fate of 30 crores of people and if any mistake or slip has been done by members of the Select Committee then I should respectfully but frankly criticise that. This amount of privilege should be given to a member of the House. I should stand corrected if I am wrong. I should not cast any aspersions merely for casting aspersions, but I will confine myself to pointing out certain serious changes and errors of procedure affecting the merits of the Bill and the discussion of the same may necessarily involve me in a criticism of the members of the Select Committee. Why should the members of the select Committee be afraid of a discussion ?

Shrimati Renuka Ray : We are not afraid of discussion. Then we must be given the right of speaking on what happened in the Select Committee.

Mr. Naziruddin Ahmad : The so-called sanctity of the Select Committee has been broken in this connection so many times.

Shri Mahavir Tyagi (U. P. : General) : There is no sanctity about it. We can discuss it.

Shri L. Krishnaswami Bharathi : We are prepared to discuss it.

Shri Mihir Lal Chattopadhyay : (West Bengal: General): Should members be allowed to carry on conversation like this, Sir?

Mr. Chairman : Order, order. I have been seeing it happening. I hope honourable members will kindly allow the speaker to proceed with his argument.

Mr. Naziruddin Ahmad : The Honourable Deputy Speaker the other day asked Dr. Ambedkar to explain why certain things took place. Dr. Ambedkar said that it was due to the influence of his enemies getting the better of his friends, they combined together and did it. Is it not giving out the so-called secrets of the Select Committee ?

The Honourable Dr. B. R. Ambedkar : I did not want to interrupt the honourable member at all. But now I think it is my duty to draw your attention and also the attention of the speaker that his motion is that because certain changes have been made in the Bill, it ought to be recirculated. I think what is most germane to that motion is that he should strightaway without any kind of preliminary discussion proceed to point out what changes have been made. I was waiting to know that from him.

Mr. Naziruddin Ahmad : That is what I was going to do when side-issues were raised.

Pandit Thakur Das Bhargava : On a point of order; I beg to submit that this question affects the previleges of the Members of the House. The question at issue is: are the members of the House not entitled to criticise the wrong behaviour or the wrong conduct of the members of the Select Committee in regard to procedure? Supposing a Bill is placed before a Select Committee and that the Bill considered by the Select Committee was not the one referred to, another Bill is substituted in its place. Are not the Members entitled' to say them by the House ? You may give a ruling on the point whether the members of the House cannot criticise this conduct of the Select Committee ? Whatever has happened in the Select Committee may not be allowed to be divulged. But the manner in which the proceedings were conducted is open to criticism, otherwise it will mean that the members of the House have no sort of control on a Bill. If a bill is introduced in the House it becomes the property of the House and every Member has a right to point out the irregularities in the Select Committee.

Mr. Chairman : This is not a point of order. The speaker will go on.

The Honourable Shri K. Santhanam : (Minister of State for Railways and Transport). May I submit that while the House is entitled to criticise the Select Committee and even censure it, it is not entitled to say that the Bill before it is not the Bill that was referred to it. It is not open to the House to say that this is not the Bill referred to the Select Committee. The House may condemn the Select Committee if it thinks that the Select Committee has not done its duty. Whenever a Bill is presented to us and is under consideration it is not open to us to say that this is not the Bill that was presented to it.

Mr. Naziruddin Ahmad : I submit that I was only going to condemn the Select Committee and nothing more.

Mr. Chairman : The honourable member will be perfectly right if he criticises the Bill as it has emerged from the Select Committee and points out the changes made. He will confine his remarks to the changes that have been made in the Bill.

Mr. Naziruddin Ahmad : I am going to submit to the House that some changes have been made, some serious changes have been made.

The Honourable Dr. B. R. Ambedkar : Point them out. I am awaiting to know the changes made. The honourable member may take his own time, but let him tell us what the changes are.

Mr. Naziruddin Ahmad : I will proceed in my own way.

The Honourable Dr. B. R. Ambedkar : He cannot go on in this manner.

Mr. Naziruddin Ahmad : I submit that the original Bill was introduced by Mr. Jogendra Nath Mandal. It bears the printing date 1st, August 1946. This was the Bill which was sent to the Select Committee. A Bill printed on 16th August 1948 is the Bill that came out of the Select Committee with the report.

The Honourable Dr. B. R. Ambedkar : What is the point on that ?

Mr. Naziruddin Ahmad : I am coming to that. There are serious discrepancies between these two Bills.

The Honourable Dr. B. R. Ambedkar : That is what we are waiting to know.

Mr. Naziruddin Ahmad : If this is accepted I will proceed to the vital points. There are serious discrepancies between the original Bill and the Bill that has been appended to the report of the Select Committee. (*Interruptions*) This is not the best way of quickening my pace. I submit that in between these two Bills, a very interesting document came in. It is a departmental draft which was printed on 17th July, 1948. It is this draft which came in between the two. All the points of order raised and argued were about this departmental draft Even in the present discussion, if I understood the Honourable the Minister of Law rightly, he mentioned nothing about this departmental Bill, but said that all the changes were made by the Select Committee and not by him. I am referring to the Bill dated 17th July, 1948.

Shri Mahavir Tyagi : That was before the date of the Select Committee meeting.

Mr. Naziruddin Ahmad : I am grateful to my friend Mr. Tyagi for pointing out that the date of printing, *viz.*, 17th July, 1948, was

before the Select Committee was first called to meet. I submit that this Bill

The Honourable Dr. B. R. Ambedkar : I would like to curtail this argument of my honourable friend by saying that it is bound to be so. The re-draft was sent one month before the meeting of the Select Committee.

Mr. Naziruddin Ahmad : That is the point I was mentioning. I am grateful for the admission. This draft was complete before the Select Committee met. I should like to state at this stage that the House was not informed about it. The authority of the House was not taken to completely change the original Bill.

Shri Mahavir Tyagi : Is the middle one exactly the same as is appended to the report?

Mr. Naziruddin Ahmad : There have been some changes. The changes made by the select Committee were slight, but serious changes were made by the Department which the Select Committee never knew.

Shrimati G. Durgabai : It is the Select Committee that has introduced the changes and not the Department.

Mr. Naziruddin Ahmad : I submit that the most important thing is that they never made a detailed examination of the Departmental draft. In fact my contention is that—I would sit down if my honourable friend Shri Santhanam can quote a single example in the whole legislative history of India or in other countries for this—a Bill that has been sent to a Select Committee has been substituted by another completely re-casting the whole thing and put along with it.

The Honourable Shri K. Santhanam : I have been on many Select Committees and in many cases the orginal Bill has been completely re-drafted by the Select Committee.

Mr. Naziruddin Ahmad : That is another matter.

Mr. Chairman : May I point out to the honourable member that Mr. Speaker has given a decision that it is the original Bill that was considered by the Select Committee along with the draft given to it by the Honourable the Law Minister? In view of that decision, the honourable member may confine his remarks to the point as to how the original Bill has undergone a change in the Select Committee. All the other remarks about what happened in the Select Committee are beyond the purview of the honourable member.

Mr. Naziruddin Ahmad : My point is that, although the Select Committee must be deemed to have considered the original Bill and

the departmental draft and to have come to this conclusion, that was done most perfunctorily and imperfectly. My point is this, that although the Select Committee considered or must be deemed to have considered the original Bill and the departmental draft and came to this conclusion and although that is so, my point is that it was necessarily done most perfunctorily and most imperfectly. They must have been, I submit, dominated by the serious changes introduced into the departmental Bill and they must have been completely under the hypnotic influence of a revised draft, a convenient readymade thing, which was placed in their hands. It must have made a tremendous psychological impression on the Members of the Select Committee, so that the Select Committee, although they had the right, largely depended upon the departmental draft and this affects the merits though not the legality of the final Bill.

My point is that any Select Committee has the right to make enormous changes, but it has never happened that a new Bill, completely changed, was placed at the hands of the Select Committee and then they would begin consideration of the new Bill. Although, technically, they had also the original Bill, still they proceeded clause by clause with the new Bill. That was a matter of merit. I submit, that the introduction of this departmental Bill has created considerable amount of prejudice to a fair and impartial consideration of the Bill. I submit that the clauses of the original Bill should have been begun one by one and changes should have been made gradually on the body of the original Bill. Instead of that it seems to have necessarily followed that the departmental Bill was taken up, although there was in them marginal references to the clauses of the original Bill. Still, I beg to submit without any disrespect to the members of the Select Committee, it was impossible for any member to really see readily what enormous changes had been effected in the departmental Bill and it is this, I submit, which has affected the merits of the final Bill. I never suggest that the Members of the Select Committee had no right to make any changes or to adopt the departmental Bill or to proceed with the original Bill. I submit that the work was, speaking again with respect, necessarily done perfunctorily and considerable responsibility in the work of the Select Committee must rest upon the departrmental draft. On a consideration of the departmental draft, therefore, the merits of the present Bill should be considered.

Shri L. Krishnaswami Bharathi : Let us see all the points of difference.

Mr. Naziruddin Ahmad : I submit that the entire legislation began with a blunder and it proceeds from blunder to blunder until we come to **a** capital blunder, namely the present Bill. I submit that the mistake first arose in the year 1937. The mistake arose there and I shall show at once that one mistake led to another mistake and that mistake led to other mistakes and all these mistakes led the Select Committee and then ultimately (*Interruption*) I ask Shri Krishnaswami Bharathi in all seriousness, should I be disturbed like this ?

Mr. Chairman : If the honourable member addresses the Chair, I think the disturbance will be much less.

Mr. Naziruddin Ahmad : Sir, I submit, you will be pleased to consider that in the year 1937, a Bill was passed into law and that is the Hindu Married Women's Right to Property Act, 1937. That, I submit, was a hasty legislation. It contained within itself ill-digested, little understood law that has led to all this trouble. In fact the author of the Bill was Dr. Deshmukh. So, Dr. Deshmukh—I am happy to find it is not our present Dr. Deshmukh—unconcentously with the *bona-fide* belief of doing good to Hindu society, introduced that Bill. The effect of the Bill was to introduce some change in the law of Succession in the compact series. According to Hindu Law, as I have understood it, when a man dies, his heirs are son, grandson and great, grandson, In the presence of the son the grandson by a pre-deceased son inherits—the grandson represents his deceased father and takes his father's share. So in this way the son. grandson and the great-grandson in three generations inherit the property. Dr. Deshmukh was enthused with the idea that the widow must be given a definite status and a definite right. So he made the widow of the propositus **a** share-holder, and not only the widow of the propositus, but the widow of a deceased son, the widow of the deceased grandson and the widow of a deceased great-grandson. They were also included within the ambit of the shareholders. That, I submit was most ill-considered, although the author was imbued with the highest sense of patriotism and welfare of the community I submit, that this was then .....

The Honourable Shri K. Santhanam : Would my honourable friend like me to inform him that this Bill was actually accepted by the late Sir N. N. Sircar, who was the greatest authority on Hindu Law ?

Mr. Naziruddin Ahmad : I am in a position to show, although not only he, but mere was a time when I also accepted it. (*Interruption*). I beg to submit that I am in possession of the House.

Mr. Chairman : The honourable member is going into the history of the amendments to Hindu Law.

Mr. Naziruddin Ahmad : I submit that the Hindu Married Women's Right to Property Act was the first mistake and I shall show that this contained within it seeds of other blunders culminating in the present Bill.

Shrimati G. Durgabai : That was a serious reflection of the legislature then existing.

Mr. Naziruddin Ahmad : I submit that the mistake was admitted by that legislature itself and I can quote passages that that legislature admitted that mat was a mistake. (*Interruptions*).

Mr. Chairman : Order, order.

Mr. Naziruddin Ahmad : I submit, I should show how the mistake came about. In fact in providing for the widow of the propositus of the deceased son, grandson and of the great-grandson, the position of the daughter became absolutely uncertain. Nobody knew what the position of the daughter was at that time under this Act.

The Honourable Dr. B. R. Ambedkar : An undertaking was taken from my friend Dr. Deshmukh by Sir N. N. Sircar that the Government will support the measure only if he agreed to drop the word daughter and he promised that he would drop the word 'daughter'

Mr. Naziruddin Ahmad : I am as much familiar with the history of that law as the Honourable Dr. Ambedkar.

Mr. Chairman : Is the honourable member going to take more time?

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. Chairman : In that case, he may resume his speech later and we may now adjourn.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Thursday, the 3rd March, 1949.

* HINDU CODE—*contd.*

Mr. Deputy Speaker : I have to inform honourable Members that the following dates have been fixed for receiving nominations and holding elections, if necessary, in connection with the following Committees, namely :—

	Date for nomination	Date for election
1. All India Council for Technical Education 2. Committee to review the working of the Railway Convention.	2-4-49	5-4-49

The nomination for these Committees will be received in the Notice Office upto 12 Noon on the date mentioned for the purpose. The elections, which will be conducted by means of the single transferable vote, will be held in the Assistant Secretary's room (No. 21) in the Council House between the hours 10-30 a.m. and 1-00 p.m.

HINDU CODE—*contd.*

Mr. Deputy Speaker : The House will now proceed with the further consideration of the following motion moved by the Honourable Dr. B. R. Ambedkar on the 31st August, 1948, namely:—

> "That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration."

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, before you call upon my honourable friend Mr. Naziruddin Ahmad to continue his speech, I feel constrained to bring to your notice once again the irregular manner in which this motion is being brought to this House from time to time. I think very few of us knew up till yesterday that this Bill was coming up again for consideration. As a matter of fact the House was under the impression that so heavy was the pressure of urgent government business that no day could be found for it; in fact several Members of this Parliament who came over here to participate in the deliberations on this subject went back under the impression that this matter was not going to be taken up again in this session. I can particularly mention an honourable Member, Pandit Govind Malaviya, who came over here and who wanted to speak for a very long period of time, and when he was assured that the matter was not coming up.....

* C.A. (Leg.) D., Vol. III, Part II, 1st April 1949, pp. 2211-43.

Several Honourable Members : Assured by whom ?

Pandit Lakshmi Kanta Maitra : Most people knew. It was not a case of ordinary business of this House. No single Member of Government stands, up and says. "I give you an assurance that this will be discussed". Nothing like that. Everybody got the impression from Party talks and elsewhere that the matter was not going to come up at any rate in this session. (*Interruption*). That being so, if it is taken up now it will be showing very scant courtesy to the House. I feel this Bill is of such a controversial nature that I do not think that you should allow this Bill to be proceeded with in the way in which it is being done repeatedly in its different stages. Sir, it is for you to consider the point of view which I am placing before the House. The House is attenuated, and because the whole Budget discussion was over most Members were under that impression—and quite reasonably. When they had no idea of the change suddenly to spring a surprise by bringing in a motion like this at this late stage, of the session, is, I think, hardly fair.

An Honourable Member : We want your decision, Sir.

Mr. Deputy Speaker : But there is no point of order here.

Shri Mahavir Tyagi (U.P. : General): But then I want information as to how long the discussions are proposed to be held. There are friends in my Province who had requested me to inform them when the Hindu Code Bill comes for consideration. I could not inform them because, I did not know whether the Bill will be considered only for today or for tomorrow or any other day or till the end of the session. So, Sir, will you now be in a position to tell the House how long we are going to discuss this Bill so that it there is time for them to come, I might inform them.

Mr. Deputy Speaker : I am in full sympathy with what Pandit Maitra has said, but I do not find any way out of it. As far as I am aware—I have been here for a number of years in this Assembly—when any matter of such importance where a number of people are interested, comes up, the agenda for the next week would be at least read out on the previous Friday. I have been accustomed to some procedure. Evidently it was not expected that there would be time for this Bill, but it was put in when one day was extended and time found for today and tomorrow. That is why previous notice could not have been given. I believe the honourable Members would try to take as good advantage of it as possible by sending telegrams, etc.

and get other Members. Therefore, so far as Mr. Tyagi is concerned, if he thinks that other Members outside are interested in the proceedings, I may say that the proceedings will be broadcast, this evening or tomorrow morning and then they will come to know of it.

An Honourable Member : How can they come tomorrow?

Mr. Deputy Speaker : They can come by aeroplane! It is not for the Chair to decide how they can come. All that I can say is that on an important matter of this nature, certainly Government must have given proper notice; it is not as if Government could lose sight of this important matter. The general public is interested, a large number of the Members from the Provinces and States are not here. Even it they were here, it cannot be expected that everybody should be expected to read all the books and carry all the information for use at a moment's notice. These are the disadvantages but I am sure the honourable Members will try to do as best as they can of the opportunity. Nobody can guarantee how long the discussion will go— it may conclude this evening or go on till tomorrow.

Shri T. A. Ramalingam Chettiar (Madras : General): What is the programme for this Bill ?

Mr. Deputy Speaker : It is entirely in the hands of the House. I do not think we can have a cut-and-dried programme. It is for the House to see whether it is necessary to continue discussion, and if there is sufficient debate to close it as early as possible.

Shri Mahavir Tyagi : Sir, I will put the question the other way round. May I know if there is any other Government Bill for the rest of the Session or this Bill is the only work before us, so that I can make out how long this Bill will go ?

Mr. Deputy Speaker : As the honourable Member will see from the Order Paper, there is so much other work. This no doubt happens to be the first Bill for the day but tomorrow other Bills will come which are on the list. We need not spend any more time on this question.

Mr. Naziruddin Ahmad.

Shri B. Das (Orissa: General) : Will you please fix **a** time-limit for speeches ?

Mr. Deputy Speaker : I cannot fix any time-limit on a controversial matter of this kind. I shall try, so long as I am in the Chair—certainly the Speaker will do it better—to see that repetition is avoided. That

is all that I can do, and I shall to the best of my ability, avoid all irrelevant matters being brought in Subject to this. I would like to give as much freedom as possible.

***Mr. Naziruddin Ahmad** (West Bengal: Muslim) : Mr. Deputy Speaker, it is a strange irony of fate that apart from the interrupted nature of the debates on this Bill, it has been decided by Government that the chequered career, of this Bill and the intermittent debate should, after an interval be seriously resumed on the All-Fools' Day. On the last occasion, when I pointed out that the Bill was sent to the Select Committee in a great hurry on the 9th of April last, some honourable member reminded us that 9th April was very near the 1st of April. Somehow or other this Bill is associated with the 1st of April. On this day, we are accustomed from time immemorial to deal with each other in a playful spirit. We issue bogus invitations, bogus marriages are announced and various other bogus things are done.

Shrimati Ammu Swaminadhan (Madras : General) : Sir, has this got anything to do with the Hindu Code ? Just now you said that no irrelevant matter will be allowed. Has all-fools' day anything to do with the Hindu Code

Mr. Deputy Speaker : I have not heard the honourable Member sufficiently to come to a conclusion as to whether it is irrelevant or not.

Mr. Naziruddin Ahmad : Sir, I was merely emphasizing the unsatisfactory manner in which the Bill is being brought up from time to time. A Bill of this importance and magnitude requires that it should be sat over continuously by honourable Members.

Pandit Lakshmi Kanta Maitra : Spat over ?

Mr. Naziruddin Ahmad : Sat over. Pandit Maitra thought "spat over". I did not mean that. I submit, Sir, a Bill of this magnitude requires that Members should sit over it continuously for a long time. The disadvantage of considering this matter at long intervals is that Members lose the thread of argument and it is very difficult for them to appreciate what has already been said so as to connect with what is said on each occasion. I submit, therefore, that this is not dealing seriously with the Bill or with the House.

On the last occasion when I was dealing with the history of this important legislation, I pointed out that the first mistake was committed in 1937 with the passage of the Hindu Married Women 's Rights to Property Act, 1937.

*C.A. (Leg.) D., Vol. IE, Part II, 1st April 1949. pp. 2213-43.

The mistake was to have rushed to the legislature and without sufficient consideration to have passed a Bill of that complicated nature. In fact, an honourable Member of that House at that time, Mr. Deshmukh, had a happy idea and without giving sufficient consideration to the subject, he came to the House and the House in a generous mood passed the Bill. By that Act, certain women were given the right of direct inheritance along with the sons, grandsons and great-grand sons. They were given independent right. They were not merely Hindu women's rights, but absolute, transferable and inheritable rights. Soon after that, a distinguished lawyer from Bengal—Mr. Rishindranath Sircar—drew attention to certain difficulties which would arise in connection with the Act. Mr. Rishindranath Sircar is a distinguished lawyer and author of a text book on the Hindu Married Women's Right to Property Act, and connected Acts. He pointed out certain inherent difficulties which would arise in connection with the Bill, and in 1938, the Act had to be amended by Act, XVI of 1938. The trouble, however, did not cease there and difficulties arose afresh. A further difficulty arose by the Act as it was amended in 1938. By the Act even as amended, right was given to the widow of the deceased, the son's widow, grand-son's widow and the great-grandson's widow and considerable difficulties arose as to the position of the daughter. In fact, there was a great deal of controversy and Mr. Sircar again pointed out the difficulties of the situation created so far as the daughter was concerned. This question was agitated throughout the country, and we find about half a dozen Bills were submitted to the Legislative Assembly to clarify the position of the daughter, to give her also that right, along with the son, grandson, and the widows of the various persons. Those Bills were presented to the House and they were on the agenda. I believe experienced Members of this House, like Pandit Lakshmi Kanta Maitra will be able,to recall the situation with which the Government was faced, when it had a large number of Bills before it—about six Bills. Sir Reginald Maxwell, the Home Member, at that time pointed out in the House that it was always a bad thing to rush legislation on social matters, without adequate consideration. And the difficulty was more and more increased as there were more and more legislations. He was, therefore, in full sympathy with the position taken by those members, and he agreed to have the matter examined properly, from every point of view, before legislation was undertaken. This led to the birth of

the Rau Committee. That Committee prepared a Draft Bill and sent questionnaires to various people, and considered and analysed the answers and they prepared another Bill. But before proceeding any further with their work, they were met with an initial difficulty. They found that there was another blunder in connection with the Acts of 1937 and 1938. They were of opinion that the Act of 1937, as it was amended by the Act of 1938 did not apply to agricultural land. the difficulty arose in this way that the first Act of 1937 was passed by the Legislative Assembly when agricultural land was a subject no longer cognizable by the Centre.

Mr. Deputy Speaker : The House stands adjourned to 2-30 p.m. *The Assembly then adjourned for Lunch till Half-Past Two of the Clock.*

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

Sreematty Annie Mascarene (Travancore State): I wish to raise a point of order. May I know whether it is the duty of a Member of this House to attend the session of the legislature throughout ?

Mr. Speaker : It is hardly a point of order. A member need not attend any discussion if he does not like to do so. But I will make one observation. If a member makes a speech in support of or in opposition to a Bill, it is his duty to remain present in the House to hear the reply.

Sreematty Annie Mascarene : If he is absent for a few days and then comes back and complains that he is not aware of the agenda of the House, can that be excused, Sir ?

Mr. Speaker : He will be judged by his statement before the House.

Mr. Naziruddin Ahmad : Before we parted for Lunch today I was dealing with the first part of the history of this legislation. The Act of 1937 and the amending Act of 1938 led to difficulties with regard to the daughter and a large number of Bills were brought forward to clarify her position. At that stage the government agreed to have the matter examined and appointed the Rau Committee. The Rau Committee soon found that the legislature had no jurisdiction to pass the Acts so far as agricultural land was concerned. The point arose

in this way : Agricultural land was in the Legislative List of the Centre under the previous constitution. The Bill was passed by the Lower House in March 1937 when it was functioning under the old Constitution. The Upper House passed it sometime in April when the new constitution of 1935 had come into force. So, when the Bill was passed by the Upper House, it had no jurisdiction to legislate for agricultural land. The amending Act of 1938 was passed when none of the Houses had this jurisdiction. These were capital blunders committed by the Legislature of the time. The Rau Committee referred the matter for opinion to the Federal court. The Federal court gave a ruling that the House had.....

The Honourable Dr. B. R. Ambedkar (Minister of Law): The history is wholly wrong.

Shri L. Krishnaswami Bharathi (Madras : General): How could the Rau Committee refer to the Federal Court ?

Mr. Naziruddin Ahmad : It is wholly wrong ?

The Honourable Dr. B. R. Ambedkar : Yes, wholly wrong.

Mr. Naziruddin Ahmad : In what respect ?

The Honourable Dr. B. R. Ambedkar : I will deal with it in my reply.

Pandit Lakshmi Kanta Maitra : He is substantially correct

Mr. Naziruddin Ahmad : The Rau Committee reported to Government and the Governor General referred the matter to the Federal Court. I was wrong only in a minute technical detail. I repeat: The Rau Committee referred the matter to the Federal Court through the appropriate channel—the Governor General. Is that wrong ? I was absolutely right and never wholly wrong. *(Interruption).*

Mr. Speaker : The honourable Member may proceed.

Mr. Naziruddin Ahmad : The point was thus referred by the Rau Committee to the Federal Court and they gave the ruling that the Legislature acted *ultra vires* so far as agricultural land was concerned. That was a capital blunder which was revealed at the time. As soon as the ruling of the Federal Court was known I come upon the scene My connection with the Hindu Code is not casual or recent. I am in a position to show to the House that I took legal steps in connection with this legislation as far back as 1941. I was then a Member of the Bengal Legislature and I submitted a Bill even before the first report of the Rau Committee was out. As soon as the judgment of

the Federal Court was known I introduced a Bill in the Bengal Legislature to apply the Act to Bengal so far as agricultural land was concerned. That was the first attempted legislation of the time in this connection in India.

Mr. Tajamul Husain (Bihar: Muslim): May I know from my honourable friend if at that time he was in favour of the Hindu Code Bill from what time did he change his mind?

Mr. Naziruddin Ahmad : The Hindu Code Bill was not even born at the time. At that time, like many others—many more famous men as far even as the topic was concerned, it turned out later that I had taken a wrong step. In fact I wanted to extend the Act to agricultural land in Bengal. That was the object of the Bill which I submitted to the Bengal Legislature. It was circulated for opinion throughout Bengal and a large body of public opinion was in favour of the Bill. Everybody at the time like me thought that that Bill was right.

Mr. Tajamul Husain : Sir, the honourable Member has not given his reasons why he changed his mind.

Mr. Speaker : That is not relevant at all. He may change his .mind any number of times.

Mr. Naziruddin Ahmad : The honourable Member should try to wait. The House will be pleased to note that the Bill was submitted by me in 1941, 14th July, and that a very large section of Hindu public opinion in Bengal was then in favour of it. Then the Bill was placed on the agenda for a Select Committee. I have got a copy of the agenda paper with me, dated 25th September 1942. I was then in a position to get it passed by the Bengal Legislature where the Hindu Muslim Coalition party had a large majority. The Party by a majority had decided in favour of the Bill and it was going to be sent to a Select Committee. By that time, however, Hindu opinion had been sufficiently crystallised against the Bill. I was told that serious difficulties would arise if the Bill was passed. Many people, including myself, then realised that if the Bill was passed, the position of daughters and others would lead to chaos. In the meantime the Rau Committee report had been published and the Bill drafted by them was before the country. A large number of meetings were held in connection with it in 1941 and 1942. There was a meeting held in my native place of Burdwan and many similar meetings were held throughout Bengal condemning the main Bill. Though I had the requisite majority in favour of my Bill, I did not proceed with it as

it was a Matter affecting the Hindu community alone and it was opposed by them. I felt that it was no good passing a measure by sheer majority of persons who were not affected by it. I was never in favour of the Hindu Code Bill, though I was for a time in favour of my own Bill. This will I hope satisfy my honourable friend Mr. Tajamul Husain. I asked the Hindu members to let me know what to do and they were against my Bill and so the Bill was dropped. I am not afraid in the least to make this admission that everybody thought and even the Rau Committee thought that a Bill foreshadowed by my Bill should be introduced to extend the Act of 1937 in every local legislature to Agricultural land. I also fell in line, but then I found this volume of Hindu opinion against my Bill. No province has ever applied the Act of 1937 to agricultural land. Thence forward, Sir, a large number of meetings have been held in Bengal and the Rau Committee Bill has been uniformly condemned.

Now with regard to this Rau Committee's report, they prepared a Bill, that is the "Hindu Code Bill—Part I intestate Succession" and that was introduced in the Central Legislative Assembly and that was sent to a very strong joint Select Committee of both. Chambers of the Central Legislature. I have got a report of the Select Committee with me. It was very strongly supported on one side, but equally strongly opposed on the other, and this Bill as reported by the Select Committee came to the Legislature once again. the Rau Committee had in 1941 reported that the Hindu Code Bill should be taken up by compartments. It is a very important joint and I wish to draw special attention to the fact that the Rau Committee actually reported that the Hindu law should be taken up by compartments, succession marriage, guardianship and others. They said at page 23 of their report of 1941.

> "The recommendation which we should like to stress most strongly is that relating to the preparation, in gradual stages of a complete code of Hindu beginning, as we have said, with the law of succession, to be followed by the law of marriage and in due course by the other topics of Hindu law. It is true that even these large groups are to some extent inter-connected; but it will be easier for the draftsman to see what he is doing if he deals, for example, with the whole law of succession than with isolated rules relating to the property rights of widows. This plan would also offer a better chance of agreed solutions on disputed points, for the larger the field, the more room there is for compromise. The aim should be, as far as possible, to arrive at agreed solutions and to avoid anything likely to arouse acrimonious controversy. This need not mean any real slowing down of the pace of reform; for true reform proceeds by persuasion rather than coercion."

At page 11, they say :

> "We do not suggest that all parts of the law should be taken in hand at once. The.....law of succession.....may be taken up first, then the law of marriage; and so on. After the law relating to each part has thus been reduced to statutory form the various Acts may be consolidated into a single Code."

That was the report and in pursuance of their report they submitted their Bill relating to the Hindu Code Part I, intestate succession. Before the Bill relating to succession as settled by the Joint Select Committee came up before the Assembly, the Joint Select Committee had itself recommended that it is no good passing this part alone, but that they should have a true picture of the entire Hindu Code as it will stand, as the different parts are inter-dependent and in this way, they recommended that this Bill should not be passed and a truer and a more comprehensive view of the Hindu law should be taken. In their report the Select Committee say:

> "We think that steps should be taken to resuscitate the Hindu Law Committee and to encourage the formulation and enactment of the remaining parts of the proposed Code in the interval which is to lapse between the present Bill when passed comes into force. It may well be found that the present Bill will require before it is allowed to come into operation, readjustment and amendment in the light of the decisions taken in connection with the other branches of the Hindu Law."

So they recommended that the House and the country should have a fuller picture. The Hindu Law Committee which had been dissolved was thus revived and they were asked to give us a picture of the other branches of the Hindu Law. The first thing which they did was to produce another Bill, the "Hindu Code Part II—Marriage." The second Bill was produced by them and later on they produced the other parts. The point which I am trying to emphasise is that these were separate self-contained Bills. The law of Inheritence was absolutely self-contained and separate and was capable of being enacted separately. The law of Marriage also could be enacted separately. There are three other parts which were in separate parts though printed in one volume was circulated. Then after obtaining opinion, they introduced some changes also by way of supplement. The House will, therefore, be pleased to note the real meaning and purpose of completely separate Bills printed in the same book as separate self-contained subjects with separate numbering. The Law Ministry, however, it seems mistook the purpose of the separate parts with separate numbering. In fact in the report of the Select Committee on the present Bill, the members of the majority say that separate

numbering and separate parts was a thing unknown and purposeless, and therefore, they wanted to blend the different parts into one complete whole with consecutive numbering. That is clearly mentioned in the report. That is the reason why they produced a Hindu Code which they thought was self-contained and more logically arranged. The purpose of the Rau Committee of separate enactments and their subsequent consolidation was entirely missed.

The first point, which I should like to take in this connection is that the changes made by the Departmental Committee set up by the Ministry of Law went beyond the purpose of the original Bill, or rather the different Bills. In fact the blending of the different parts of the original Bill into one is the thing which has created a lot of difficulties and has made confusion worse confounded. As was suggested by the Rau Committee, the better thing would have been to pass separate parts separately, so that there will be the least objection and the attention of the House as well as of the country could be focussed upon individual subjects, though they may have a comprehensive view of the entire Hindu Law. Now the blending of the different parts or Bills into one whole with running numbers has placed us in this difficulty that we find in the House that there is hardly any Member who has spoken; who is completely in favour of the consoclidated Bill as it has emerged from the Select Committee. Some are in favour of the marriage provisions; others are in favour of the inheritance; with regard to guardianship and other things, there is the least objection. Separate Bills as in the original scheme would have simplified matters and reduced our troubles.

Pandit Lakshmi Kanta Maitra : Maintenance portion is the best; all the rest is rubbish.

Mr. Naziruddin Ahmad : Maintenance portion, as Pandit Maitra reminds us, is the least objected to. So if the parts were kept separate, then the House would have been in a position to deal more easily with individual subjects. The subject of maintenance is not controversial. It does not affect the religious structure of the society. It does not wound the religious feelings and age-long beliefs of the Hindus and it could have been passed at once. That was the reason for the separate treatment. But the Departmental Committee rather, missed the purpose of the separate treatment and blended the whole thing into one.

Sir, I would point out that in the second Rau Committee report also, the Bill was prepared in different compartments, they repeated

their advice that it should be taken up separately. The Bill was intended to be taken up in parts separately and should be dealt with individually.

Mr. Tajamul Husain : Why don't you bring amendments to this effect ?

Mr. Naziruddin Ahmad : My honourable friend by the interruption means to say "I shall mix up things in any way I like, and it is for you to bring suitable amendments to separate them.". It is impossible. If you cook meat, fish and vegetables together and ask a vegetarian to separate them by means of an amendment and then take the vegetables alone, that would be to putting the cart before the horse. The Bill has mixed up distinct and separate categories of law into one complete whole.

Shri L. Krishnaswami Bharathi : No, no. There are separate chapters.

Mr. Speaker : The honourable Member is expressing his own view and other honourable Members will have an opportunity of expressing their own views. What is the good of interrupting ? It will only prolong his speech.

Mr. Naziruddin Ahmad : The sections of one part have been lifted . from that and placed in another part.

Shri L. Krishnaswami Bharathi : On a point of order, Sir. Am I not entitled to correct, when his statement that it has mixed up different chapters is open to correction?

Mr. Speaker : That way he will be entiteld to correct again. There - should be no interruptions. I think, we are unnecessarily impatient. Whatever our views in respect of the Bill for or against, we must give a patient hearing to the opponent and try to meet his points I am going to give the fullest opportunity to every one. So let there be no interruptions.

Mr. Naziruddin Ahmad : I am very grateful for this direction. The point is that the definitions and other clauses in each part were absolutely separate. It is easy for any one who has the patience to compare the original Bill presented by Mr. Jogendranath Mandal to - the House with the revised Bill to see the difference.

An Honourable Member : Who was Jogendarnath Mandal ?

Mr. Naziruddin Ahmad : He was the previous Law Member. If any one compares the old Bill presented by him and the present Bill, it would be easy to see that portions from different parts have been

transplanted to other parts. The act seems to be absolutely *bona fide*, but it was not based upon a full appreciation of the purpose of the separate treatment of the subjects. In fact, the Select Committee was presented with a re-drafted Bill by the Ministry of Law. That I submit would be likely absolutely to mislead the Select Committee. It is this document which was printed on the 17th July 1948. It was prepared ready-made for the handy use of the Select Committee before it ever met and the Select Committee was presented with this Departmental Bill. I have already dealt with one point, that in this intermediate Departmental Bill is a serious departure has been made, namely, different parts have been mixed up into one whole so to make it impossible to put separate parts back to their original shape. It can be done by a research student, not by Members of the House without any such tendencies or inclinations. I submit therefore, that the first mistake was committed by the Departmental Committee in mixing up entirely separate subjects. This introduces a serious and unprecedented constitutional innovation.

Then, Sir, the Departmental Committee has introduced very serious changes in their Departmental Bill. It will be extremely important when we consider the bearing and the effect of this Departmental Bill on the proceedings of the Select Committee. The Departmental Bill, as I shall attempt to show introduced many very important changes, though I must point out that neither the Honourable Minister for Law nor the Members of the Select Committee nor the Members of the House seem to be aware of the seriousness of the changes effected. In fact, the Minister for Law on the last occasion when he spoke in the present session in support of the motion for consideration pointed out the substantial changes made in the Bill. But he was careful to insist that all the changes had been made by the Select Committee. I took careful notes of his speech and this can be verified from the official reports. He pointed out with commendable thoroughness the departures made in the final Bill from the original Jogendranath Mandals's Bill. That show that the Honourable Minister was totally unaware of the serious changes made by his Department in the so called Bill submitted to the Select Committee. In fact, I asked a Short Notice Question of the Honourable Minister as to whether the Departmental Committee had been authorised to make any substantial changes in the original Bill. The answer was that they had no such authority. On the other hand, the Minister for Law took the entire

responsibility for the changes, if any on himself. To a supplementary question of Mr. Ramnarain Singh the Minister for Law stated "I introduced no changes". In fact, the point was whether the Departmental Bill had made any substantial changes, and he made it absolutely clear that he had made no such changes and that the Select Committee alone had made the changes. The entire House seems to be of the opinion that the Select Committee made the changes and that no substantial changes were made by the Departmental Committee. On the last occasion when I was on my legs, I was repeatedly asked to point wherein the Departmental Committee had made substantial changes. It is important that I should refer to this, because it shows that the Members of the Select Committee or the House or even the Minister for Law was not aware of any substantial changes really made, and I submit therefore, that, if I can show that substantial changes were really made by the Departmental Committee and very rarely by the Select Committee, it would open up before the House important considerations. The Select Committee were given a readymade new Bill and the assurance in the report of the Select Committee is that it contained no substantial changes and that the changes were rearranging the clauses, their re-numbering and such formal changes as are purely of a drafting nature. This is the assurance we get in the report of the Select Committe. I would therefore, like to point that those substantial changes were made by the Departmental committee. It is not easy to trace the changes and I cannot blame any honourable Member for failing to notice them. I had to prepare a comparative chart, not of the numbers alone, but of the clauses and sub-clauses of the three bills side by side. I asked for a copy of the Departmental Bill, but it was not supplied. I submit, Sir, that the Departmental Bill is a very important document and should be supplied to the Members. We have been supplied with a report of the evidence of witnesses before the Select Committee, but the most important document which played such a large part in the framing of the final Bill, has not been supplied. It was with the greatest difficulty that I have procured a copy, not from the Department, but through the courtesy of an honourable Members. Then, Sir, I prepared a comparative statement in parallel columns of the appropriate provisions of the original Bill and the corresponding provisions of the Departmental Bill and the final Bill, and I find it extremely difficult to explain the real significance of the changes except by reference to the comparative chart.

3-00 P M.

I am trying to get the Bills in parallel columns printed. I am sorry it could not be completed and it could not be placed in the hands of the Members for their convenience. But, I shall refer to the substantial changes made one by one. In doing so, I shall refer to the very important changes made by the Departmental Committe. It is on a consideration of the changes by the Departmental Committee that this point will be decided. I shall refer to the changes made by the Departmental Committee which has been officially denied by the Department and also unknown to the Members in the House. The House will be pleased to consider certain clauses of the original Bill.

It is in part I, clause 2, sub-clause (3)(a). The clause corresponding to this is clause 2 of the departmental Bill, sub-clause (2). The original Bill says:

> "It shall be presumed until the contrary is proved that the whole of this Code applies to every person who is not a Muslim, Christian, Parsi or Jew by religion."

The original Bill was thus a mere rule of presumption. But in the departmental Bill, it is no longer a rule of presumption but a positive rule of law. In the original Bill, it was to be presumed that, if a man was not a Muslim, Christian, Parsi or Jew, he would be "presumed" to be a Hindu. That would not be a rule of law but a rule of presumption. In the Departmental Bill this is changed to stand like this:

> "This Code also applies to any other person who is not a Muslim, Christian, Parsi or Jew by religion."

The difference between the two is that under the original Bill any man who is not a Muslim, Christian, Parsi or Jew, would merely be presumed to be a Hindu and would be presumed to be governed by this Act. In the Departmental Bill, it is said that.—

> "the Code applies also to any one who is not a Muslim, Christian, Parsi or Jew."

I submit, Sir, this is introducing a substantial change. While it was a rule of presumption in the original Bill, it is now a positive rule and not one of presumption, that the Hindu law applies to any one not being Muslims, Christians, Parsis and Jews.

In the proviso it is said:

> If it is proved that the Hindu law does not apply to anyone, the Hindu law will not apply."

I think it is most unsatisfactory way of stating things. The final Bill applies it to them and this with the proviso, has changed the law.

Sir, I submit that this has introduced a serious change. I am not concerned with the policy of the law. But, I am concerned with the changes in the Departmental Bill of which the Select Committee seem to be unaware.

Then, Sir, coming to another part of the Bill. In the Departmental Bill.....

Mr. Tajamul Hussain : May **I** have your permission to raise a point of order ?

Mr. Speaker: Yes.

Mr. Tajamul Husain : My learned friend, Mr. Naziruddin Ahmad has been trying to show before the House that the Departmental Bill was considered by the Select Committee and not the original Bill and he does this after your finding of fact and ruling that the original Bill was considered by the Select Committee. I want to know your ruling now.

Mr. Speaker : I have been hearing his argument and I feel he is speaking in support of his amendment that the Bill be circulated for purposes of opinion and the other amendment is for recommitment to the same Select Committee. Therefore, though my ruling stands, I think, he is trying to make out a case that, there has been such a substantial departure from the original Bill as introduced by Sjt. Jogendra Nath Mandal, both in the scheme as well as in the content, that it is necessary now to recirculate or recommit it to the same Select Committee. His point, as I have understood till now, is that the original scheme of the Rau Committee in the first Bill was that the various parts of law should be taken in different compartments. It was possible to separate one from the other, but in the present scheme, the whole having been made as an organic whole, it is difficult now to take certain parts that the people agree to and drop out other parts, with which the people do not agree. How far he is right is another matter. therefore, he says that, it is necessary to recirculate the Bill for opinion. That is how I have understood the point till now. I do not think he is contradicting my ruling.

Mr. Naziruddin Ahmad : Not in the least. Sir, it will be too late in the day even to suspect that I have questioned your ruling. The ruling was on a point of law. It was very technical in nature. My point of order was based upon some assumptions which could not clearly be proved.

Mr. Speaker : The honourable Member may proceed with his argument.

Mr. Naziruddin Ahmad : I substantially agree that my point of view is that. But it is something more too. In fact, it is my purpose to show that if the honourable the Minister of Law, who is responsible for the Departmental Bill, and the Members of the Select Committee were not precisely aware of the substantial changes made in the Departmental Bill, can it be said that legally and also in fact they have substantially considered both ? They technically considered both, but did they as a matter of fact adequately consider them ? The question no longer arises as a matter of law on account of your ruling, the justice of which I respectfully accept. But the point I am stressing is that though they considered both, they were faced with the obvious difficulty that there was a Bill presented to them which was said to be a mere redraft of the original Bill and a re-arrangement of things of the clauses, with the express guarantee that no substantial changes had been made and yet in fact substantial changes had been made. My point is that though technically the Select Committee considered both the original Bill and the Departmental Bill, they did not and could not, as a matter of fact, give sufficient or adequate consideration to these undisclosed changes. My purpose is to make out a case for recommitment of the Bill to Select Committee or for circulation.

The next change made by the Departmental committee of a substantial nature is in clause 2, sub-clause (4). the change introduced here was made by the Departmental Committee. The change is absolutely new and it was not in the original Bill and is a substantial change. This was introduced by the Departmental committee in the Bill and not by the Select Committee. That is the most important point. The Departmental Bill provides:

> "2(4). Notwithstanding anything contained in the Special Marriage Act of 1872 (HI of 1872) this Code shall apply to all Hindus whose marriages have been solemnised, under the provisions of that Act prior to the commencement of this Code."

The original Bill did not contain anything like this and the original Bill left those who were married under Special Marriage Act of 1872 to be governed by that Act. That is divorce, maintenance and other provisions applying to those who were married under that Act would be governed by the provisions of the Special Marriage Act, 1872, which are entirely different. How different from the present Code is not very material. The present sub-clause however wants to make out

that those marriages under the Special Marriage Act of 1872, which took place before the Code comes into force, would be governed not by the Special Marriage Act but by this Code. I submit that this is a substantial departure or change introduced in the Departmental Bill and it was introduced by the Departmental Committee and was merely accepted by the Select Committee as a matter of course. This is a substantial change, whether it is good or bad, whether it is *bona fide* or not is not the point but a substantial change has been effected by the Departmental Committee and the Select Committee was not specifically informed of the change made. Though there are references to clauses of the original Bill, etc. given in the margin, still this subclause is absolutely new without any indication whatsoever that this was a change. Changes in sub-clauses have not been indicated. In fact in ordinary Bills coming out from a Select Committee all changes made by the Select Committee are either underlined or sidelined. The Select Committee has stated that this practice is unnecessary, because marginal references have been given. I submit that marginal reference is only to the clauses but this sub-clause (4) is absolutely new. The reference to this sub-clause is Part I, Section 6, page 2 and Schedule I, page 30. The change effected is neither indicated here either by reference or by suitable marking arrangement. At least it is a change of a substantial nature and the attention of the Select Committee was not in any manner specifically drawn to it, nor the nature of the change is indicated. That is change No. 2. I am dealing only with the more substantial and important changes. There are many. I hope at a future time to make available to Members as well as the public a publication which will clearly show the real changes introduced by the Department and the changes really introduced by the Select Committee. I again insist that the Select Committee made very few changes and most of the substantial changes introduced were made by the Drafting Committee.

I come to another part of the Bill. In the original Bill, Part I, clause 3, which deals with the operation of the code in relation to previous customs and usage, it is provided:

> "In regard to any matters dealt with in this Code its provisions shall supersede any custom or usage not hereby expressly saved"

The original Bill would supersede only "customs or usages" not thereby expressly saved—all customs not specifically recognised by the original Bill would be superseded. Let us look at the corresponding

provisions in the Departmental Bill which also was accepted without question by the Select Committee. I may point out that the change was effected by the Departmental Committee and not by the Select Committee. In the Departmental Bill, it is clause 4 which corresponds to clause 4 in the final Bill. The marginal note is "over-riding effect of the code" which is much different but I lay no emphasis on this note as it is not part of the Bill. The Departmental Bill says:

> "Save as otherwise expressly provided in this Code any text or rule or interpretation of the Hindu Law or custom or usage or any other law in force immediately prior to the commencement of this Act shall cease to have effect as respects any of the matters dealt with by this Code."

The verbal changes are not important but you will please consider that several important new matters have been introduced by the Departmental Committee. "Any text, rule or interpretation of Hindu law" and later on "any other law in force immediately prior to the commencement of this Code are absolutely new. Let the House pause for a minute and consider the seriousness of the change. All custom and usage not specifically recognised by the original Bill would be absolutely gone. But the Departmental Bill would include also within its mischief any text, rule or interpretation of Hindu law. This is something which is entirely different from usage and custom. In fact any text of the sacred books, the *Vedas* and *Smritis* any rule or interpretation of the Hindu law, that is to say, all ruling of the High Court, the Federal Court and the Privy Council, all authoritative expositions of the original Sanskrit texts or the interpretations by the highest judicial authorities must perish as also any other law in force immediately prior to the commencement of this Code. The sacred texts and the rich case law for over a century and a half would be abolished altogether by a stroke of the pen. "Any text, rule or intepretation of Hindu law" probably includes all things. "Any other law in force immediately prior to the commencement of this code" would probably be included within the passage, but I submit that the Departmental Bill would try to illegalize, if I may be permitted to use the expression, all texts, interpretation of Hindu law or rule not specifically recognised by the Bill, and they will all be gone. I submit this is a substantial change.

Shrimati G. Durgabai (Madras : General): On a point of order, is the honourable Member within his rights to question the competency of your ruling ? When he calls this Bill as the 'Departmental Bill' he is making very great insinuation against the members of the Select

Committee. The Members of the Select Committee have gone fully into the Bill and they have noted all the changes. He can no longer argue on the point by referring to it as the Departmental Bill. We want your ruling as to whether he is in order.

Mr. Speaker : I am afraid it is hardly a point for ruling. These are observations which, I appreciate, irritate some Members; but I do not think the honourable Member, when he uses the expression 'Departmental Bill' suggests thereby that the Members of the Select Committee did not consider the points. He is, as I have been noticing, using the expression 'Departmental Bill' for the sake of brevity instead of saying each time "the Bill which was drafted by the Department for the benefit of the Select Committee Members." I do not think it goes anything further than that and we should not read any meaning into it. Departmental Bill is only a short phrase for that. As I once pointed out—I do not know whether the honourable Member was present when another honourable member of the House raised this point, the point that the is making out is that the changes made by the Select Committee are substantial. And if the changes are substantial then he is certainly within his right to say that the Bill should be re-committed or recirculated. That seems to be the point though he is going his own way, doing so in a very elaborate way which he could do in a shorter time.

Shrimati G. Durgabai : My point is he is imputing ignorance to the Select Committee members.

Mr. Naziruddin Ahmad : Not in the least. I am imputing, not ignorance, but carelessness naturally following from the Departmental Bill which gave them no clues to the changes. (*Interruptions*).

Mr. Speaker : Order, order.

Mr. Naziruddin Ahmad : I withdraw the expression "ignorance". But they were effected by **a** mistaken faith in the Departmental Bill. (*Interruption*), *Even* if this is not yet apparent to him I am sorry for the honourable Member that he is still suffering from the obsession.

Mr. Speaker : Let the honourable Member proceed on a different line; let him say that they should have given more attention to this subject.

Mr. Naziruddin Ahmad : That is what I mean. In fact for my argument I do not require any hard expression—I rely more upon reason than upon an expression. If I have used any expression which is hard, even if not unparliamentary, I withdraw it. The point is we shall again begin with . . .

Mr. Speaker : He need not repeat it; he may proceed further.

Mr. Naziruddin Ahmad : The other point is that not merely have substantial changes been made without sufficient or any clear notice to the Select Committee . . .

Shri L. Krishnaswami Bharathi : That is what we want to object to. He cannot say so. We knew it fully well.

Mr. Naziruddin Ahmad : If the Honourable Minister for Law is unaware of the change and if honourable Members are repeatedly asking me to point out the substantial changes it shows that they are unaware of them and accepted the changes *bona fide* without knowing them. I think the changes were introduced by some over-zealous draftsman who thought of improving the Bill and he introduced some *bona fide* changes without realising that he was thereby making a new Bill altogether, and nobody saw through it.

The Honourable Dr. B. R. Ambedkar: I must really protest against this. It is a grave reflection on the Draftsman. My friend is almost suggesting that after the Select Committee had considered everything the Draftsman took it into his head to make changes in the Bill. I very strongly protest against it.

Shri L. Krishnaswami Bharathi : And we protest against the way in which he is insinuating against the Select Committee Members.

Mr. Speaker : Changes made after the Select Committee report ?

The Honourable Dr. B. R. Ambedkar : That is what he is suggesting.

Mr. Speaker : He means “before”.

Mr. Naziruddin Ahmad : Yes, Sir, I am absolutely certain that I said that the changes had been made before the Select Committee met.

Mr. Speaker : There appears to be some misapprehension.

The Honourable Dr. B. R. Ambedkar: I have no idea. If I understand my friend's speech it simply means that the Select Committee blind-foldedly signed the report without going into anything or it means that after the Select Committee had done its work the Draftsman took it into his head to introduce some changes. It cannot have any other meaning.

Mr. Naziruddin Ahmad : As to whether the changes were made *bona fide* or in a careless or *mala fide manner* it is not material for us to go into.

Mr. Speaker : The honourable Member's point is that changes which he believes to be substantial are made.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to hear any friend setting out *seriatim* the changes which he thinks the Select Committee has made. Assuming that certain changes were made by the Select Committee, I would like to know whether that in itself would be a sufficient ground for re-circulation.

Mr. Naziruddin Ahmad : Not at all : I never said they were made by the Select Committee.

Mr. Speaker : What I was suggesting to the honourable Member was that assuming that certain changes are of a substantial nature in his opinion have been made, his case is strong enough for pleading and he need not say whether the changes were made out of ignorance or *mala fides.* The Select committee with an open mind and considering the whole thing could have made the changes. Still he thinks that they are of a substantial nature and, therefore, the Bill should be re circulated. All people need not agree that these changes which he believes to be substantial are necessarily substantial. Opinions may differ.

Mr. Naziruddin Ahmad : The Honourable Minister for Law said that it is for me to show what changes were made by the Select Committee. I have been at pains to show that I am not drawing the attention of the House to changes made by the Select, Committee at all. That is I believe the mistake which is haunting the mind of the Honourable the Law Minister.

The Honourable Dr. B. R. Ambedkar : Nothing of the kind.

Mr. Naziruddin Ahmad : In fact he has been insisting that the ... changes were made by the Select Committee. The changes I have been mentioning so far are changes made not by the Select Committee but made by the Departmental Committee.

Mr. Speaker : Order, order, there the rub comes in. Whosoever made the changes so long as the Select Committee has accepted them they are changes by the Select Committee and not changes made by somebody else without the knowledge of the Select Committee. He need not make that kind of insinuation or assertion. By whomsoever they were made—even at the instance of a single Member or the Law Minister or the Drafting Committee or anybody else—he should proceed on the assumption that these changes are changes made by

the Select Committee and he should proceed to show that they are substantial.

Mr. Naziruddin Ahmad : My difficulty is I cannot stop at that. The Honourable the Law Minister insists that the changes were introduced by the Select Committee and not by the Drafting Committee, that would make it absolutely clear that the Select Committee faithfully and *bona fide* accepted the changes introduced by the Drafting Committee. If that is so the Select Committee did not apply its mind to it when accepting it, knowing it to be a change. If the Select Committee did not know, as the Honourable the Law Minister does not know, that these changes were introduced by the Departmental Committee, they accepted technically, but not with full appreciation, all the changes made. That is the point which makes my case stronger. It is not merely the changes made by the Select Committee willingly but the changes made by them of a substantial nature without realizing that they were accepting any changes which makes the case stronger. In fact, they obviously assumed that the Departmental Bill was **a** mere re-draft without any substantial change. This is corroborated by the fact that even the Law Minister supposes that I am pointing out changes made by the Select Committee. That is why I am constrained to argue that the Select Committee's attention was not specifically drawn to the changes. On the other hand they took the Departmental Bill as a substantial reproduction of the original Bill without any substantial change. I can say that without casting any reflection ; we can always argue mistakes or oversights or *bona fide* errors. I need not put the point better than that.

Sir, I submit that the Members of the Select Committee or the Minister for Law need not be very sensitive about this. It is a matter of record. In fact, even the honourable the Law Minister admitted that he introduced no change and he assumes that I am pointing out changes made by the *Select* Committee. They have been adopted: as your ruling must be accepted, they must have accepted these changes. But the question I am pointing out is that the consciousness or the legal mind was not directed towards these because they were not aware of it. The Honourable Minister insisted the other day on a question that the Departmental Committee introduced no substantial changes. The substantial changes are there and they were not indicated in the Departmental Bill. Therefore, there is no question of insinuation.

Mr. Speaker : Let us not go into that question again.

Mr. Naziruddin Ahmad : This is one substantial change. Sir, I thought I was treading on very solid ground. If any offence is meant to the Members of the Select Committee by pointing out obvious matters, I am very sorry.

Shri L. Krishnaswamy Bharathi : You cannot insinuate against Members.

Mr. Naziruddin Ahmad : What insinuation ? That they made mistakes ? To err is human. I was only suggesting that the Members of the Select Committee were human beings.

Shri B. Das : On a point of order. Sir, Can the honourable Member go on pointing out the defects of the Select Committee for three months continuously. The point was raised and settled. Whether I accept his words or not is a different question, but the honourable Member cannot go on talking in the filibustering attitude which my friend Mr. Baijnath Bajoria took some years ago on my Bill to amend the Child Marriage Act. He quoted *shastras* and read from the *Mahabharata* and other books. Here the poor Select Committee is being hammered by my friend Mr. Nazirudin Ahmed for the last three months. This is not a law court. Sir, you ought to ask him to produce his views that the Hindu Code Bill should not be passed. Why should we go on interminably talking against the Select Committee? As the oldest Member of this House, I cannot understand it.

Mr. Speaker : The honouable Member may indicate only the substantial changes.

Mr. Naziruddin Ahmad : Yes, Sir.

Sir, I object to my speech being called a filibustering speech. I think the honourable Member goes a bit too far. It seems that he has locked up his mind absolutely and he is not in a mood to hear.

Sir, may I ask you to consider this and see if I am in the least irrelevant or wrong ? Unless the change is substantial, palpably, obviously it rules out texts of the Hindu Law and rule of interpretation by the highest Courts. The original Bill did not contain anything of the sort and the change was introduced to the Departmental Committee. Is it not, in all fairness, a substantial change ? Mr. Das cannot listen to legal matters. He is good in financial matters but in legal matters he is rapidly approaching his second childhood.

Shri B. Das : We are here to legislate. We are not here to understand the interpretation of lawyers or High Court Judges. *(Interruption).*

Mr. Naziruddin Ahmad : Sir, much depends on the substantial changes. Have not these been introduced by the Departmental Committee ? On that issue the whole case depends. If it was introduced by the Departmental Committee and if it is a substantial change, then the Select Committee was not informed of it. It has been repeatedly made clear that the Select Committee considered the Departmental Bill and not the original Bill. If this is insinuation, I am sorry I shall have to discharge my duty faithfully but absolutely fearlessly though very respectfully. I submit the Select Committee was absolutely cajoled into believing that the Departmental Bill was a substantial reproduction of the original Bill, and even the Honourable the Law Minister is persuaded to believe that there was no change. It is not insinuation, it is a fact. Who has made the changes ? If it were the Law Minister, then he would have been aware of it. Is it somebody else ? Then is it improper for me to point out that somebody else has made the change ? I say he has done it by mistake or *bona fide.* Would it be proper for me to suggest that these changes were made fraudulently ? I do not suggest anything of the sort. The only thing I could do is to assume that these things were done *bona fide*—just a little flourish of the pen to improve upon it. "Why merely rule out customary law ? Let us abolish all the rulings of the Privy Council."

Sir, criticism is proper. If any language I have used is improper, I withdraw it. But what about the criticism ?

Shri L. Krishnaswami Bharathi : Let us hear the other points.

Mr. Naziruddin Ahmad : Why be anxious? Why not listen to this?

Mr. Speaker : Order, order. We cannot carry on the discussion of the Bill in this manner. There are Members who want to support the Bill and others who want to oppose it. Let everyone have his say in any manner he likes, without being offensive or speaking unparliamentary language. That is the only objection. Otherwise, at every stage there will be interruption and those who want to support the Bill will be the sufferers in the long run, because time will be spent in unnecessarily carrying on this kind of discussion. The Member honourable will have his say and if he says that the Select Committee did not give attention to this or that or that these points were not examined by the Select Committee, where is the ground

for taking insult in that ? He is perfectly entitled to say so. But he should not insinuate something else; that is what I have to guard against. But I believe he is entitled to express his views.

There is another point also to which I was going to invite the attention of the honourable Member. He says that because the Law Minister is unaware of a substantial change, therefore somebody else introduced the change. There is another aspect to it. If the point which he considers substantial is not considered by the Law Minister as substantial, then the Honourable Law Minister is perfectly entitled to say that he is not aware of any substantial change. Therefore, it does not necessarily mean that some other party in ignorance or behind the back of the minister, introduced it in the Select Committee. Let the points be substantial and let the controversy be limited to the question as to whether the points are substantial or not. That I believe is the chief point in dispute.

Mr. Naziruddin Ahmad : I stand subject to correction. It may have been done by the Law Minister without realising or without believing this to be a substantial change. But the matter is exactly where it was. These are substantial matters, whether introduced by the Law Minister consciously or by anyone else unconsciously, in any manner. It is not proper for us to argue on that. But by one stroke of the pen all texts, rules and interpretations of the Hindu Law have been abolished. The effect of this will be that all learned rulings of the Privy Council, the Federal Court and the High Courts are all gone, by one stroke of the pen. In fact, if this is not seriously interfering the original Bill, I do not know what is. There may be difference of opinions. But to one approaching the question absolutely impartially, and with a free mind, there would be no difficulty in agreeing with me that this is very serious interference with the Original Bill.

Shrimati G. Durgabai : Please speak of other substantial changes.

Mr. Naziruddin Ahmad : This is dealing very lightly with **a** very serious matter. But I say these are very serious changes which verge on interpolations, *bona fide or mala fide,* it does not matter.

Then Sir, the next cage made by the Departmental Committee is to remove the definition of 'caste' in Part I clause 5 sub-clause (b) which contained a definition of caste. This has been entirely omitted.

Mr. Speaker : What clause does the honourable Member refer to ?

Mr. Naziruddin Ahmad : I am referring to Part I, clause 5, subclause (b) which has the definition of 'caste'.

Mr. Speaker : Is he referring to the original Bill ?

Mr. Naziruddin Ahmad : Yes. And that definition has been entirely omitted in the Departmental Bill without any indication being given anywhere about this omission. There is a mere reference in the margin to the original clause. This sub-clause has been omitted, and there is no indication to be found of it. I submit, Sir, that the Select Committee's attention was not specifically drawn to this omission, and whether these are substantial matters or not, there cannot be much difference of opinion. At any rate the Select Committee was entitled to be told that these changes were made ; whether these are substantial changes or not may vary from individual to individual. But the Select Committee was entitled to know that these changes were made. But they were not told.

And then we come to sub-clause (f) of the same clause and here we find that the definitions of *Gotra* and Pravara have been omitted. And then in sub-clause (j) the definition of *Stridhan* has also been omitted. Therefore the definition of Caste, the definition of *Gotra,* the definition of *Pravara,* and the definition of *Stridhan* are entirely omitted. What effect this would produce on the Bill, cannot be explained shortly on the floor of the House.

Shri A. Thanu Pillai (Travancore State) : May I know from the honourable Member whether even if the definition is not of a term required in the law, it should be defined ?

Mr. Naziruddin Ahmad : I think the honourable Member is not proceeding as cautiously as he should. In fact, whether a definition is wanted or not wanted is not the question. A definition was in the Bill and that was removed by somebody, without any authority. The Departmental Committee removed it, and the attention of the Select Committee, who was alone competent to remove it, was not drawn to this fact.

Shrimati G. Durgabai : The Select Committee takes full respon sibility for it.

Mr. Naziruddin Ahmad : This was not considered by the Select Committee.

Shri M. Tirumala Rao (Madras : General): Are you sure that the compositor did not omit it ?

Mr. Speaker : Those who interrupt can also be called obstructionists. If interrupted he will take longer time over it.

Shri L. Krishnaswami Bharati : I may cut short further arguments by saying that the Select Committee's attention was actually drawn to all these things. The honourable Member is unnecessarily harping on this point, that the attention of the Select Committee was not drawn. But as a Member of the Select Committee I may say that all these points were fully considered, all aspects of the matter were considered by the Select Committee. Therefore the honourable Member need not go over this matter over and over again.

Mr. Speaker : I will say that even if the question has been fully considered, the honourable Member is perfectly within his right in giving his views. Honourable Members will see that he is making a case for re-committal of the Bill to the Select Committee, and for this he has been putting forth his arguments. The Select Committee might have given full, adequate, proper, reasonable attention, but in his opinion, it has been inadequate. Therefore, he is insisting that the attention given has been inadequate and the Bill should be re-committed to the Select Committee. That is the line of argument he is following ; and if he is following that particular line of argument, he must maintain that stand. As regards the fact of adequacy just as the Select Committee Members cannot be absolute judges of the fact, as to whether the Bill was given proper or adequate attention, similarly, his judgment also is not final. But he is placing his opinion. Let us proceed on that basis. Otherwise there will be no end to this discussion.

Shri L. Krishnaswami Bharathi : I was only referring to the question of fact.

Mr. Speaker : It is **a** question of opinion. What the honourable Member supposes to be a question of fact, is actually a question of opinion. Adequacy of attention of not is a question of opinion and to merely a question of fact.

Mr. Naziruddin Ahmad : The question is the adequacy of consideration.

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

Mr. Naziruddin Ahmad : Sir, I have been interrupted almost continuously the other day, and again a series of interruptions are made to-day.

Mr. Pandit Lakshmi Kanta Maitra : I am supporting you all along.

Mr. Naziruddin Ahmad : There is my friend Mr. Bharathi. Is he right in telling the House what took place in the Select Committee ? If so, I have equally strong authority, also from the Members of the Select Committee themselves to the contrary. It would be very wrong to compare one Member's statement with that of another and I would rather draw a veil on what happened in the Select Committee. The honourable Member need not assure us that the Select Committee has considered everything. If he is so sure, I am equally sure that for many reasons, adequate consideration could not be given.

Shri L. Krishnaswami Bharathi : I was talking only about myself.

Pandit Lakshmi KantaMaitra : You could not understand things.

Mr. Naziruddin Ahmad : In fact, it is not the case of one man. It is the whole Select Committee and not a one-man affair. If one man has followed, it does not mean that others also have followed it.

Pandit Lakshmi Kanta Maitra : Yes, one swallow does not make a summer.

Mr. Naziruddin Ahmad : Exactly, "One swallow does not make a summer". If there is one man of the Select Committee who believed that no change was made, that would be enough to make out a case for recommittal of the Bill to the Select Committee. And I again submit that these are very serious changes. And then how many of them ? My friends wonder how many changes there are. I can show them many, many such changes. Take the...

Shrimati G.Durgabai : In the meantime, on a point of information, may I ask whether the changes made by the Select Committee are absolutely binding on this House. Cannot the House accept the changes or reject them ?

Mr. Naziruddin Ahmad : I submit with all respect that it is irrelevant to ask if the Select Committee's changes should be accepted or rejected by the House. The Select Committee can make any change and the House can make further changes too. The House can make changes. There is no doubt about it. But the point is that the Select Committee for some reason did not or could not or failed or omitted to discharge its duties fully. If that is so, the right to go fully into the question rests with the House and it is for this reason that I appeal from the Select Committee to the larger House. There is of course the still larger house, the entire electorate of India. I now come to clause 7 of the original Bill. (*Interruption*). I think some Members have lost their heads.

Mr. Tajamul Husain : I must strongly protest against the statement that the Members have lost their heads. I raise this point of order seriously. He must withdraw it unconditionally.

Mr. Deputy Speaker : I think it was not necessary for the honourable Member to say all that.

Mr. Tajamul Husain : Let him withdraw it. Was he in order in making that statement ? He has all along been making violent gestures against honourable Members.

Mr. Deputy Speaker : I do not think it is proper for the honourable Member to say that the Members have lost their heads. It detracts from the dignity of the house. At the time I must say this: I have been noticing one member or other using language which may not be liked by the person addressed. There must be some amount of patience shown. There should not be interruptions either by the spoken word or by signs. Therefore when the honourable Member is turning over the pages of some of his papers, if they interrupt him he will miss it and their interruptions are likely to ginger him up.

Mr. Naziruddin Ahmad : Sir, I was told across the table that I had lost my head.

Mr. Deputy Speaker : The honourable Member has lost his thread—the thread of his argument.

Mr. Tajamul Husain : May I know whether he has lost his sacred thread?

Mr. Naziruddin Ahmad : I will proceed with my arguments, Sir. Clause 2 of the original Bill gives the definition of 'son' thus 'son' includes a *dattaka kritrima* or *godha son,* etc, but not a *dasiputra* and others. This has been entirely committed in the Departmental Bill.

Shri L. Krishnaswami Bharathi : When an honourable Member reads out something, should he not do so correctly ?

Mr. Naziruddin Ahmad : I find that this has been omitted. If it is anywhere the definition or in any other part of the Bill, my attention may kindly be drawn to it.

Mr. Deputy Speaker : The honourable Member who just now interrupted the speaker has been again and again giving advice. Mr. Naziruddin Ahmad may be a bit slow in making the references he desires to make. He need not be interrupted.

Mr. Naziruddin Ahmad : I submit that the definition of 'son' has been omitted. If I am wrong, the mistake may be pointed out to me.

Dr. P. S. Deshmukh (C. P. and Berar : General): I think the honourable Member is wrong.

Mr. Deputy Speaker : If honourable Members go on interrupting in this way it will be impossible to conduct the business of the House in an orderly manner. Mr. Naziruddin Ahmad may go on without putting questions to other honourable Members.

Mr. Naziruddin Ahmad : As I said the definition of son has been omitted as also the illustrations found in Part II, sub-clause (3) of clause 2 in regard to intestate succession. Four illustrations have been omitted. These are substantial changes. I am only trying to draw attention to the nature of the changes made. According to me these are omissions of a very serious nature. They are not omissions of a drafting nature. I am not questioning the right of the Select Committee to improve the Bill, or to make these omissions. These changes, however, were made not by the Select Committee but by the Drafting Committee and the attention of the Select Committee was not particularly drawn to these omissions.

Then I come to another important part of the Bill to show the very serious changes introduced by the Drafting Committee. In Part II, clause 4 of the original Bill, the list of heirs has been given. It says that the inheritable property of a male intestate shall devolve according to the rules laid down in this part: (a) upon the enumerated heirs referred to in section 5, if any; (b) if mere is no enumerated heir, upon his agnates, if any ;(c) if there is no agnate, upon his cognates, if any; and (d) if there is no cognate, upon the heirs referred to in section 10, if any.

Mr. Deputy Speaker : I do not know if the honourable Member has not a copy of the Hindu Code Comparative Tables, which was circulated to all honourable Members. The original Hindu Code as drafted by the Rau Committee has been revised in the Ministry of Law and the changes made have been indicated there. I would therefore suggest that the honourable Member need not labour this point. I think he has spent sufficient time over the first point. I personally think that the point is sufficiently clear and of course illustrations can always be multiplied. If it is a point here and there, the House will take it into consideration. There are certain points which when made are sufficient in number. I agree they can be made clearer, but the changes made in the tables, are sufficient.

4 P.M.

Mr. Naziruddin Ahmad : Sir, the list is neither complete nor accurate and does not indicate the changes made. In fact the remarks against the original clauses of the original Bill and as to the changes are extremely meagre. I have now come to a very important change, namely the inheritance. It has been so changed as to make it impossible to recognise with the new Bill or the departmental draft nor is it a substitute for the original Bill at all. I submit that with regard to the inheritance a larger number of changes had been made.

I shall show first of all that in clause 4 of the Bill in Part II (a) regarding the enumerated heirs ; I am in a position to show that serious changes have been made in the enumerated list. In the original Bill was one and in the revised draft by the Departmental Committee they are completely different. The original arrangement has been made entirely topsy-turvey and then it is said that if there are no enumerated heirs the property devolves upon agnates. The definition of agnates is well-known. That was in the original Bill, but in the Bill as revised by the Departmental Committee the word 'agnate' is now very much restricted. So in case of the numerated heirs failing the agnates, even the distant agnates would be entitled to be heirs according to the Hindu law, according to the Muslim law and every other law and that was according to the original Bill. But in the revised draft by the Departmental Committee the word 'agnate' has been seriously modified to be within certain degrees. So agnates which are beyond those degrees would have been entitled to inheritance under the old Bill, but under the Departmental Bill, they would be shut out. Similarly, cognates are also restricted in the Departmental Bill and this is a substantial change as it eliminates the distant Agnates and distant cognates. Then, Sir, in clause (d) of 4, the words preceptor and others are entirely eliminated. The scheme of inheritance in clause 4 of Part II of the original Bill is changed at every step and very serious changes have been made and the enumerated heirs have been changed. The agnates have been restricted; the cognates have been restricted and the other clauses have been entirely eliminated. I can quite understand that these changes may be legitimately made on a full consideration by the Select Committee, but these were changes not by the Select Committee, but by the Departmental Committee and Members asked me "Tell us what are the changes made ?"

Mr. Deputy Speaker : Am I to understand from the honourable Member that if the Select Committee Members all got up and they

address themselves to that, will the honourable Member be thoroughly satisfied with what has been done by the Select Committee.

Mr. Naziruddin Ahmad : The point is that the Select Committee Member were not made aware of the changes.

Mr. Deputy Speaker : It serves no useful purpose. It is not a question of law whether this House has got jurisdiction over the Select Committee's piece of handiwork. It has been decided and sufficiently discussed to show that the Select Committee has looked into every one of the clauses to come to a conclusion. But on matters of substance, the old law has been widely changed. There is some substanse in that. Those are the matters on which the honourable Member should address the House. I do not say that all that has been said is out of place, but sufficient has been said.

Mr. Naziruddin Ahmad : To many honourable Members sufficient has not been said. It is said that these are not substantial changes and I shall take care to point them out. The difficulty is that the changes are too numerous to ensure the attention of the House. In fact the changes are very serious and very various and very substantial and my point is that they were introduced not by the Select Committee and whether they accepted them or not is a different matter. My thesis is that they were presented with a ready-made Bill with the assurance that no substantial changes had been made and so the attention of the Select Committee was not sufficiently drawn to that matter. Now let us consider the actual changes in the list of inheritance. In fact in the original Bill the list of inheritance is to be found on pages 4, 5 and 6 in the body of the Bill. This has been bodily lifted from this place in the departmental Bill and transported to the Seventh Schedule. While the other parts remain in the body of the text, the list of inheritance, strangely and for unaccountable reasons, removed. It is not very easy to compare the original list with the new list as it appears in the Seventh Schedule; there have been serious and substantial changes. The Honourable Minister wanted to know what are the changes made.

The Honourable Dr. B. R. Ambedkar : I am quite aware of them. So far as I am concerned, you need not spend your labour in enlightening me at all.

Mr. Naziruddin Ahmad : If these are intentional changes, then what is the point in saying that no changes were made by the Drafting Committee, and that all the changes were made by the Select

Committee, and for the Select Committee say: "We confined our attention to the Departmental Bill". Therefore, it follows that their attention was not drawn to this. It is **a** very simple conclusion.

The Honourable Dr. B. R. Ambedkar : Give it in your own way.

Mr. Naziruddin Ahmad : It seems to me that the Honourable the Law Minister found himself in an inconvenient position and somehow or other, though the mistake is admitted, it is not done pointedly. In fact changes of a substantial nature were made. I was asked on the last day by the Honourable Law Minister himself: "Let us know what are the changes made by the Drafting Committee", and now he says : "I know everything". Of course he must have studied them later on, but these changes are of a serious nature. They were introduced not by the Select Committee, but by the Departmental Committee and the question is how far the Select Committee did actually notice them. At least in the note of dissent Dr. Bakshi Tek Chand says: "We confined our attention to the Departmental Committee Bill and not to the original Bill" because they were assured that in the Departmental Bill they did not introduce any substantial changes at all. So taking this into account, I do not know where to go. In fact, if that is not a serious irregularity and a matter requiring attention of the House. I do not know, what is. When the Department has committed an error of judgment, I think it is better and proper to admit it than to say: "I know all this but no changes were made; every change was made by the Select Committee" and when I say that the Select Committee did not make the changes and they were made by the Departments Committee then it is said: "I know it". Then we ought to know where does the Department stand ? If the Department makes a change.....

Shri B. Das : This is not a law court for us to hear point by point. The honourable Member should make a speech and sit down.

Mr. Deputy Speaker : The honourable Member, Mr. Das made this statement when the Speaker was in the Chair. It is a law court in some sense and not a law court when he wants to impress upon honourable Members as if he is arguing a case in a court of law. In any case we ought not to interrupt him. That kind of talk ought to be avoided as far as possible.

Shri B. Das : We are talking among ourselves.

Mr. Deputy Speaker : The honourable Member has no right to talk when another honourable Member is on his legs and he ought not to disturb.

Shri B. Das : He is talking at us.

Mr. Deputy Speaker : You ought not to talk. No honourable Member has the right to talk while another honourable Member is speaking. He ought to listen and not cause noise in the House.

Shri B. Das : You understand the exasperation. I am ready to get out, but the honourable Member's speech should not exasperate Members of this House.

Mr. Deputy Speaker : This is wrong. No honourable Member's speech ought to be called exasperating, unless he uses bad language or unparliamentary language. We may or may not agree, but the honourable Member is putting his case before the House. Nobody has a right to dub an honourable Member's speech as exasperating.

Shri B. Das : I accept your verdict. But he used terms such as "fraudulent" about the Law Minister.

Mr. Deputy Speaker : The Honourable Law Minister is sufficiently strong to take care of himself.

Mr. Naziruddin Ahmad : I beg to submit that the honourable Members should compare the original clause.

Mr. Deputy Speaker : Are there any matters of substance by which the honourable Member can induce the House to change its mind ?

Mr. Naziruddin Ahmad : There are substantial changes. I shall have to point out these things. In fact, I shall have to go on enumerating a large number. The best thing is to admit the mistakes or listen patiently. I must enumerate all the points and if I repeat my argument or be irrelevant, I can be called to order. In Part II, clause 5, there is Class I. Sons, widows, daughters and so forth. A change has been effected in this by the Departmental Committee. Son of a predeceased son of predeceased son has been newly introduced in the corresponding part of Class I in the 7th Schedule in the Department Bill. In fact, the Schedule has been so far removed from its place in the original Bill that it is not easy to notice it unless the two Classes are placed side by side, to find out the change. In act, the son of a predeceased son of a predeceased son did not find a place in the original, but it has been introduced in the Seventh Schedule of the revised Bill by the Departmental Committee.

Then we come in the other lists. The first in the list in the original Bill after the enumerated heirs in item No. 2 is daughter's son. In the Departmental Bill, the daughter's son has been brought further down. Then comes the father and the mother. According to the original

Bill, the mother would have been entitled to inherit in preference to the father. Here the father and the mother have been placed together in the Departmental Bill and their order has been changed and whereas under the Departmental Bill they inherit together under the original Bill the mother would have inherited first to the exclusion of the father, and in the absence of the mother the father would have inherited. The daughter's son as has already been pointed out, has been brought down further in the Departmental list. It should be obvious to any one who cares to consider this matter that these are substantial changes.

Then we come to Class III of the original Bill. The brother's son's son who was first in the list of Class III in the original Bill has been entirely lost sight of in the Departmental Bill. If this was deliberate an intentional, then we would have got some indication of it in the report of the Select Committee or in the speeches. I want to know if this is a substantial change. It may not be substantial to a man who is not the brother's son's son, but to the brother's son's son, it is a substantial change, because in the absence of, other heirs he would have been entitled to property.

Next in the list comes the sister. We have now the brother and the sister inheriting together in the Departmental Bill. The brother who was very high up in the list in the original Bill has now been transferred and brought down to of Class III and is inheriting with the sister (*Interruption*).

Am I to stop my argument ?

Mr. Tajamul Husain : The honourable Member has no right to speak to another honourable Member. I object to it very strongly, Sir.

Shri Lakshminararan Sahu (Orissa: General): There is no quorum it seems.

Mr. Deputy Speaker : There is quorum.

Mr. Naziruddin Ahmad : Supposing a man dies leaving a brother and a sister. Under the original Bill the brother would have inherited, the sister would have been postponed; but under the Departmental Bill the brother and the sister inherit equally. The brother is now brought down on a line with the sister having been superseded by 11 others in the list. I submit this is introducing very substantial changes.

Then we come to brother's son. He was very high up, in Class I. He is by the Department brought down to Class III along with sister's

son. If a man died leaving a brother's son and a sister's son, under the original Bill, the brother's son would have inherited, but under the Departmental Bill the brother's son and the sister's son inherit together. I submit these are very substantial changes.

Then I come to Class IV of the original Bill. In Class IV of the original Bill, a man dying leaving a father's mother and a father's father have been treated differently in the original Bill and the Departmental Bill. Between the father's mother and a father's father being the heirs under the original Bill, the father's mother would have been preferred; the father's father would have been postponed. But under the Departmental Bill both have been put together and they inherit together. I ask whether this is not a substantial change.

Then, Sir, we have a certain class of heirs in Class IV, items (1A), (1B), (1C) and (1D). These were introduced by an amendment of the original report by the Rau Committee. In the original Bill, if there was a father's widow and a brother's widow, the father's widow would have been preferred to the brother's widow. In the Departmental Bill the father's widow and the brother's widow inherit together. I submit this is a very substantial change—whether good or bad, it is not the point. Then coming to two other heirs in the supplementary list introduced by way of amendment of the Rau Committee brother's son's widow and brother's son's son's widow are entirely omitted in the Departmental Bill. In the original Bill they would have inherited one after the other. In the Departmental Bill they are omitted. There is nothing corresponding to this in the Departmental Bill.

Then coming to item 2, Class IV, the father's father is very low in the original Bill but he has been brought up very much higher in the list prepared by the Departmental Committee.

Then Sir, we come to the father's brother and also to father's sister. Father's brother is No. 3 in the list. Father's sister is sixth in the list. So in the original Bill, if there was the father's father and the others, the father's father would be preferred. Then comes the father's brother, father's brother's son, father's brother's son's son and then the father's sister. In the Departmental Bill the father's father and the father's sister have been brought together, the latter being brought higher up.

Then there is a large list of heirs which has been entirely omitted. Nos. (4), (5), (7), (8) and (9) are heirs in the original Bill. They are nowhere in the Departmental Bill. They are entirely eliminated.

I know, Sir, that it is a tedious business to refer to this but I am discharging a duty and I undertook to supply every Member with **a** copy of the comparative statement which is in course of preparation. I shall ask the Members to verify each change and I shall be most glad if I am proved to be wrong.

The Honourable Dr. B. R. Ambedkar : I hope it shall be supplied free of cost.

Mr. Naziruddin Ahmad : If the Government thinks I am **a** charitable institution then I shall be glad to deserve the hope.

Mr. Deputy Speaker : Had it been supplied earlier all this time would have been saved !

Mr. Naziruddin Ahmad : The pity is that my printing press is worse than the Government Printing Press.

Mr. Deputy Speaker : If the suggestion had been made to the Honourable the Law Minister, he would have had it printed.

The Honourable Dr. B. R. Ambedkar : Certainly, I would have had it printed.

The Naziruddin Ahmad : I have the manuscript ready. I shall be glad if the Honourable the Law Minister would publish it.

The Honourable Dr. B. R. Ambedkar : Now it would be of no use because you have said the same thing on the floor of the House.

Mr. Naziruddin Ahmad : Now we come to Class V of the original Bill. By strange accident—I should be afraid to insinuate anything— everything in it has been omitted in the Departmental Bill. It contains nine classes of heirs and four other supplementary heirs. Thirteen heirs in Class V of the original Bill have been entirely omitted, whether by mistake...

The Honourable Dr. B. R. Ambedkar : Very deliberately !

Mr. Naziruddin Ahmad : But then why did the report of the Select Committee say that no substantial changes were made ? If these were omitted deliberately, then the only point is whether these are substantial changes. The House has been assured by the Honourable the Law Minister that no substantial changes were made. That these changes were made deliberately is now admitted. The question now therefore is whether these are substantial changes. But we have been assured that no substantial changes have been made.

The Honourable Dr. B. R. Ambedkar : That is a matter of opinion.

Mr. Naziruddin Ahmad : Then the question turns upon this whether these are substantial changes. It may not be very important from the point of view of the law-giver but it may be important to the heir. If you disturb the order of heirship in the slightest degree, it is a substantial change. Up to this time we had been assured that the changes that were made were only of a drafting character. The report of the Select Committee is that the Department made no substantial changes. The report is so clear and emphatic and they emphasize the points so clearly, that they say no substantial changes have been made—only renumbering and some merely verbal changes were made and that for this reason that the usual method of indicating the changes by side-lining or under-lining the changes had not been adhered to in the Departmental or the Final Bill.

Now the question of questions at last boils down to this : Whether these are substantial changes ? What is the test for this ? Upsetting of heirs' lists is not a substantial change ? I submit it is. If it is that I am arguing too much, arguing as if in a Law Court—if any honourble Member thinks it is so—then it seems that the seriousness of the changes has not been fully appreciated.

Mr. Tajamul Husain : Except by you !

Mr. Naziruddin Ahmad : It is very unfortunate that this should be appreciated only by one man ! Of course there is a highly paid department and a highly qualified Law Minister, who is able to appreciate the slightest differences and I am sorry that I have had to undergo all the trouble and expenditure of time and money to find out and explain all this. It has not been a very easy matter and the difficulty was further enhanced by the fact that the Department which introduced all these changes could not make available to me a copy of their draft Bill. It was after a great deal of searching that I could procure a copy. So the search has been prolonged and the consideration has been prolonged and it has been for me a very difficult matter. I do not mean to say that any other Member is not capable of appreciating it, but few have the time or the inclination to go through them. And why should they ? Isn't it the duty and the obvious privilege of every Member—and I say this in defence of Members—to rely on the Ministry of Law, to rely upon the express guarantee in the Select Committee report that no substantial changes have been made ? I think they would be fully justified and when an honourable Member said that none expect me knew this, I cannot blame him. The blame

lies with the Department. Now, is that the end of these changes ? By no means.

Come to Class V-A. It was introduced by the Rau Committee by an amendment of their earlier Bill. They have noted that this Class V-A should be introduced after Class V. Class V-A has been entirely omitted. I humbly suggest that it is an inadvertent omission, but inadvertent or intentional, it is absolutely damaging to the integrity of the Bill.

Then, Sir, we come to Class VI.

(*Interruptions*)

Mr. Deputy Speaker : The honourable member will go on.

Mr. Naziruddin Ahmad : Then we come to Class VI, items (1) and (2)—mother's mother and mother's father. The mother's mother would be preferred to mother's father under the original Bill but they have been put together in the Departmental Bill. So they now inherit equally together. In item (3) of Class VI, the mother's brother and mother's sister inherit—the latter after the former under the original Bill, but under the Departmental Bill, they inherit together. Under items (4) and (5) mother's brother's son has been entirely left out in the Departmental Bill. Items (7), (8) and (9)—mother's sister's son, mother's brother's daughter, mother's sister's daughter are also entirely omitted.

Then item (3) in Class VI is also entirely omitted.

This concludes the list of inheritance in which there are no less than 20 transpositions, additions and omissions. Heirs have been entirely eliminated either intentionally or deliberately but this does not appear from the Select Committee's report. I have been repeatedly asked by honourable Members of the Select Committee in the House to point out where the differences lie. I do not want to blame any honourable Member for not noticing them. On account of the transposition or removal from their original places the changes would not be obvious. And there is the guarantee in the report of the Select Committee that there is no substantial change. These were changes through the Departmental Bill and may have escaped the attention of the Select Committee. At least their attention was not drawn to them in the Departmental Bill. There is a very respected and capable Member, Dr. Bakhshi Tek Chand who says in his minute of dissent that the Select Committee confined their attention to the Departmental

Bill, because they were assured that no substantial changes had been made. I would ask Dr. Bakhshi Tek Chand whether his attention was drawn by the Department or Dr. Ambedkar to these things. These large omissions and transpositions of places would not have been noticed by any Member unless he goes through the laborious process of comparing the two like a laborious lawyer.

Dr. Bakhshi Tek Chand (East Punjab : General): I would like to draw the attention of my honourable friend to page 9 of the report where my note of Dissent is printed. I have given there some of the substantial changes, at any rate changes which I considered to be substantial—and because of which I had suggested that the Bill should be recirculated for eliciting public opinion or in any case recommitted to the Select Committee. At page 9 the broad points on which changes had been introduced in the redrafted Bill, have been mentioned though not in such great detail as the honourable Member is doing today in his speech. It is not correct to say that no member of the Select Committee noticed them. Of course nobody had the industry or the patience which the honourable Member has, but the matter did not escape their attention. As he has mentioned my name I feel it my duty to bring this fact to the notice of the House. In the Note of Dissent I have referred to the changes to the order of inheritance which I considered to be substantial, and in regard to which I am in entire agreement with my honourable friend.

Mr. Naziruddin Ahmad : I am extremely grateful for this clarification, A respected Member with the highest judical experience thinks that these are substantial changes and he thought that they were so substantial that the Bill should be recirculated. That is the thing which I am asking for. There is at least one Member of the Select Committee who thought the changes to be substantial. He noticed them, but was his attention specifically drawn to them ?

Pandit Thakur Das Bhargava (East Punjab: General): Mr. Balkrishna Sharma has also signed it.

An Honourable Member : He has had no judical experience.

Pandit Lakshmi Kanta Maitra : He has had social experience.

Mr. Naziruddin Ahmad : Pandit Balkrishna Sharma is also of the same opinion. It is however enough to quote the name of Dr. Tek Chand. His authority and position will not be seriously enhanced by the addition of any other names. These respected Members felt

that these are substantial changes and therefore thought that the Bill required recirculation. There are changes in other parts of the Bill which would required herculean labour to find out.

In view of these changes made by the Departmental Committee and in view of the weighty remarks of Dr. Tek Chand that these were very substantial changes I think the matter should not admit of any doubt that the Bill should be sent to the Select Committee to reconsider these changes or to recirculate it.

An Honourable Member : The same Select Committee.

Mr. Naziruddin Ahmad : I have no objection to the same Select Committee. It consisted of men absolutely good and true, men with judicial and legal experience and who are practical authorities on those branches of the law. In fact, all kinds of talents were represented in the Select Committee. I have the fullest confidence in the Select Committee and I have not lost my faith in it. My point is that these matters should be carefully scrutinised and each change carefully weighed and deliberately accepted. Substantial changes have been quietly and deliberately introduced. We are assured by the Law Minister and again by the Select Committee that no substantial changes have been made. On the one hand we have the opinion of the highest legal talent in the House saying that these are substantial changes and on the other, another legal luminary says that he has deliberately introduced these changes and at the same time, that he has introduced no substantial changes. That is the guarantee under the signature of Dr. Ambedkar himself. So the Select Committee is hopelessly divided within itself. If two such eminent authorities differ on a broad matter like this I think the matter requires reconsideration by the Committee and that is what I ask for. Though the Law Minister thinks that these were not substantial changes only an unsophisticated House would agree with him. A man's right to inherit is a substantial right. To say that changes therein are not substantial changes would be to say something that is palpably and obviously wrong. I submit therefore that the changes being substantial and the guarantee being that no substantial changes have been made, on this ground alone the Bill should be sent back to Select Committee or for circulation with the positive direction that their attention should be directed towards these changes and they should consciously, intelligently, wilfully accept or reject them. There are other substantial changes.

Shri B. N. Munavalli (Bombay States): He is simply repeating the same arguments.

Mr. Deputy Speaker : I thought he had concluded that topic. If he has no other topic he may sit down.

Mr. Naziruddin Ahmad : I have other very serious changes. The point I would like to know is for how long the Honourable Law Minister would insist on saying that there are no substantial changes.

Shri Khurshed Lal (Deputy Minister of Communication): Till you have finished.

Mr. Deputy Speaker : Does the honourable Member with his experience as a lawyer ever expect the mover of a Bill to admit that what he has done is wrong ?

Mr. Naziruddin Ahmad : Sir, I bow down to this weighty observation of yours. But this is not a law court for us to take sides. It is a Legislative Assembly where we have no sides. We may express our opinions honestly but we do not take sides for the sake of fees: we are not committed to one side or another. I submit that in the Legislature, a Law Minister responsible to the Legislature should make it his duty to make an admission if he is wrong. I therefore have a faint hope that this accumulation of errors, of changes, would induce in a slight degree the Law Minister to admit that he had made substantial changes and thereby to make further progress of my argument absolutely unnecessary. But in view of the fact that the honourable the Law Minister stands to his gun like a good fighter—he has been a fighter all his life and he is famous for his grit and moral quality—as he stands to his gun, I have to submit to him more and more changes just with a faint hope to induce him ultimately to concede.

Shri Khurshed Lal : I do not wish to interrupt, but is it his intention to go on in this-manner till he has made the Law Minister admit that he has made a mistake ?

Mr. Deputy Speaker : Why the Law Minister alone ? Possibly other Members also agree with him for he has carried the House with him.

Shri B. Das : How do you say so, Sir ? We can howl him down.

Mr. Naziruddin Ahmad : It is not so very easy. Sir, I have been threatened with being howled down. I am yet to see a Member who can howl me down here—I have yet to see him. I respectfully invite anyone to howl me down. He will find that I do not even require the microphone to be heard in the House in the midst of howlings.

Mr. Deputy Speaker : I request that the challenge need not be accepted on the floor of the House !

Mr. Naziruddin Ahmad : He will not find it safe to challenge me outside the House.

Mr. Tajamul Husain : You did not like us to interrupt and therefore I want your permission first to seek a point of information. The point I want to know from my honourable friend is that today is the 1st of April. Is that the reason why he is taking up the whole day on this Bill ?

Mr. Naziruddin Ahmad : That question should be addressed to the Honourable Law Minister for bringing the motion on the All Fools Day !

Mr. Deputy Speaker : Whether it applies to anyone or not let the honourable Member proceed with his speech.

Mr. Naziruddin Ahmad : Then we come to the next clause of Part II of the original Bill.

Dr. Mono Mohan Das (West Bengal : General): Sir, it appears the honourable Member is not prepared.

Mr. Naziruddin Ahmad : I could not catch the honourable doctor.

Mr. Deputy Speaker : He may go on. I hope he will conclude his speech at least today.

Mr. Naziruddin Ahmad: I do not know.

Mr. Deputy Speaker : I would only say that enough has been said so far on this point about changes of substance. After all it is not the honourable Minister in charge of the Bill who alone need be satisfied. He holds his point of view.

The Honourable Dr. B. R. Ambedkar : The House will decide.

Mr. Deputy Speaker : Yes, the House will decide it ultimately. Therefore the honourable Member need not take further time in driving it home to one individual Member however important he may be. He may try to carry the House with him. As I have already said, enough has been said in regard to the matter of substantial changes. I thought he was going to refer to other matters of substance like marriage, divorce, adoption. I do not think the honourable Minister would be dogmatic and I am sure that though in respect of this he may have strong views he would like to wait and see how far there are arguments on the other side, and he may be convinced. I thought the honourable Member would come to matters of substance. A long time has been spent on this point already.

Mr. Naziruddin Ahmad : I must frankly express my gratefulness to the Law Minister for listening to me so patiently. I submit that I have other points indicating changes which I shall show briefly.

Mr. Deputy Speaker : Leave along the changes. There are changes I may put it this way. I am not letting down a secret and there is no secret from the House as I conceive. When a matter comes before the House after having been referred to Select Committee, the Select Committee might commit a mistake and it is open to the Members to say that it is wrong and the wrong has to be corrected. Except one or two matters as for example what each member said in the Select Committee which ought not to be placed before the House as things are in a fluid condition and it would result in a disturbance and antipathy. I may say this. So far as the Select Committee is concerned any draft may be considered. The draft was of the Ministry here. At the outset it is said in Para. 2 of the Select Committee's report here:

> "The draft Hindu Code, as introduced in the Legislature, did not receive any Departmental scrutiny prior to its introduction, and the Ministry of Law (*which certainly includes the Minister of Law at its head*), which had an opportunity to examine the Bill during the period between the end of the last session of the legislature and the beginning of the present session, have now produced a revised draft....."

The draft was placed before the Select Committee and the ruling of the Speaker is that the original Bill that was sent to the Select Committee, along with the draft—which we will assume is the complete list of all the amendments which the Law Minister wanted to introduce—was all considered by the Select Committee. It is open to the honourable member to say that the Bill and the clauses in it are wrong, that they upset society and that sufficient attention was not paid to the changes that were effected in the Select Committee to the original Bill. I think that would help the House to come to a conclusion regarding either the whole Bill or individual clauses in it on matters of substance. We have already spent a lot of time over this matter. It is necessary that on this matter there may be clarification and I do not think anyone here wants to dogmatise upon a particular matter.

The Honourable Dr. B. R. Ambedkar : I might say openly that I have not an empty mind but I have an open mind.

Mr. Deputy Speaker : That is what we expect.

Mr. Naziruddin Ahmad : I am very grateful to him. Sir I come to another branch of the Bill. I would like to draw the attention of

the House to clause 102 of the Departmental Bill which corresponds to clause 101 of the final Bill. This was introduced for the first time by the Departmental Bill. The Select Committee made some changes, but the Departmental Committee had introduced a serious change. It is provided in the Departmental Bill that if there was a male and a female in the same line, the male shall take double of the female. In the final Bill their shares are made equal. As regards the justice of the final Bill, it does not matter, but I submit this new introduction is a departure.

Mr. Deputy Speaker : Even if there are, say, 100 departures, is it necessary to exhaust all the 100 departures ? Only some ten or fifteen—even these are many—by way of illustration will be enough. He may take a few departures and say that for these reasons the matter should be sent back to the Select Committee or sent round for eliciting public opinion. I thought the honourable Member concluded that portion referring to various items where there is a departure. There are departures and the list which has been circulated contains a list of departures extending over thirteen pages, though it does not state how the departures have been made.

Mr. Naziruddin Ahmad : Departures have not been noted.

Mr. Deputy Speaker : True, they have not been noted in the manner of departures. It is admitted there are departures but only some important items may be taken for the purpose of showing that on account of these departures the Bill should be sent to the Select Committee or to another Select Committee or that it must go round the country for opinion. I think we are taking too much time on this.

Shri B. Das : Sir, I said that all along.

Mr. Naziruddin Ahmad : I can quite appreciate the exasperation of one or two Members.

Shri B. Das : Sir, he is using the same word !

Mr. Naziruddin Ahmad : Sir, I draw attention of the House to clause 103 of the Departmental Bill which corresponds to clause 102.....

Mr. Deputy Speaker : I have already pointed out with reference to this.

Mr. Naziruddin Ahmad : This is an important matter.

Mr. Deputy Speaker : I can only suggest to the honourable Member. I cannot argue for him. I can only say that instances need

not be multiplied. According to him there are a sufficient number of instances, but if he thinks he has forgotten one point which is more important than others then he may point it out.

Mr. Naziruddin Ahmad : Clause 103 of the Departmental Bill corresponding to clause 102 of the final Bill restricts the agnates to five degrees. The change restricts the heirship to five degrees only. In case there are no enumerated heirs, then according to the Hindu Law the property will go to the agnate, but the definition of agnate has been seriously curtailed and reduced to five degrees. In the next clause, clause 104 of the Departmental Bill corresponding to clause 103 of the final Bill, cognates are also similarly restricted to five degrees. This is a serious departure from the conception of the Hindu Law and from the original Bill. Any agnate, however distantly connected, would be an heir in the absence of preferential heirs. With regard to cognates also, in the absence of agnates any cognates, however distantly connected, would be heirs. So, with regard to cognates the change is entirely new. With regard to agnates it is a serious departure from the original clauses. They merely described that in the absence of enumerated heirs they go to agnates, and in the absence of agnates they go to cognates.

Mr. Honourable Dr. B. R. Ambedkar : Cognates or agnates ?

Mr. Naziruddin Ahmad : Cognates.

I submit these are serious changes. According to Dr. Ambedkar these are not serious because he has made the changes.

Shrimati G. Durgabai : Serious and substantial changes !

Mr. Naziruddin Ahmad : Substantial if you like. I think thay are not merely substantial but also serious. *Serious* goes a degree further. In fact, this restricts the right of heirship of certain people.

Mr. Deputy Speaker : Is the honourable Member not closing at five? Enough has been said on this topic.

Mr. Naziruddin Ahmad : No, Sir. Not enough to convince some of the Members. I want to absolutely convince them.

Shri Khurshed Lal : Then you will have to argue till doomsday.

Mr. Deputy Speaker : If he has not been able to convince for five hours now, he will not be able to convince him at the end of another five hours.

Mr. Naziruddin Ahmad : The Honourable the Law Minister has though not a vacant mind, an open mind and he will in the long run be convinced.

An Honourable Member : He will ponder over your speech tonight.

Mr. Naziruddin Ahmad : Clause 10 of the original has been entirely omitted in the Departmental Bill—absolutely forgotten. In fact in the Hindu law, as in the Muslim law, in the absence of enumerated heirs, in the absence of agnates, cognates other unrelated heirs succeed. They are the preceptors, acharyas, *shishyas* and *sahabrahmacharis* and pupils under the same tutor, are the heirs. According to the Departmental Bill, the respect for *acharya*, respect for *sahabrahmachari* and consideration for them is entirely thrown overboard. This again is a serious change. The cumulative weight of these serious changes as well as many numerous others will I hope succeed in ultimately winning over the Minister of Law to my side.

Then we come to clause 109 of the Departmental Bill and 108 of the final Bill. This provision is absolutely new. In that clause some new heirs have been introduced which were not in the original Bill.

With regard to succession to *stridhan*, some changes have been made. And then in Part II, clause 14, where heirs stay together

Mr. Deputy Speaker: If the honourable Member is likely to
5 P. M. conclude soon, we will stay on for a few minutes more.

Mr. Naziruddin Ahmad : No, Sir.

Shrimati G. Durgabai : We will stay on for five minutes more, if the honourable Member will conclude.

Mr. Deputy Speaker : I shall leave it to the speaker.

The House now stands adjourned to 10-45 a.m. tomorrow.

The Assembly then adjourned till a Quarter to Eleven of the Clock Saturday the 2nd April, 1949.

* HINDU CODE—*contd.*

Mr. Speaker : The House will proceed with the further consideration of the motion that the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration.

Shri Mahavir Tyagi (U. P. General) : May I know, Sir, till what time we will discuss this Bill, for there is some Government business and so we want to be sure as to how long the consideration of this Bill will take ? Now filibustering is going on at this stage and all the Members are anxious to speak and they may not get any chance to speak for two or three days. I would like to know, Sir, as to how long they are going to discuss this Bill, for the present.

Mr. Speaker : It is difficult for me to say as to how long a particular Bill is going to be discussed. It much more depends upon the Members themselves. All I can say is that excepting perhaps one day, *i.e.* the 4th, I think all the days in the next week are allotted to Government business; and it is a matter for Government to say as to what Bills they want to bring or not to bring before the House and it depends on the priority with which they look upon the different measures.

Shri Mahavir Tyagi : May I through you, Sir, request that the Government might be pleased to take over urgent business first and leave the consideration of this Bill to the end or let us know definitely as to which Bills are to be taken, so that we can come prepared for the next Bills. We are anxious to participate in the discussion of the other Bills.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, the question raised by my honourable friend, Mr. Mahavir Tyagi has really got some importance. I quite appreciate the observation made by you just now that in such a matter the House decides how long a Bill should go on and this necessarily means that when there are a sufficient number of speakers and they want to continue for a sufficiently long time, they may continue. This is what I understand to be meaning of that observation. Of course, I quite see that it is not in the hands of

*C.A. (Leg.) D., Vol. III, Part II, 2nd April 1949, pp. 2246-89.

the Chair to say how many days are going to be allotted. At the same time, I think, the Chair would realize how difficult it is for Members who want really to speak on this motion and debate it fully that they know at least if any more Bills are going to be taken up during this session. I was submitting yesterday at the very beginning when this motion was taken up that most of the members had the impression that this Bill was not going to be taken up again in this session. As a matter of fact when a Bill of this importance and magnitude, was to be brought again for consideration, we expected that sufficient notice would be given to the Members in time. It was not done. The whole importance of my contention arises in this way that if we are to know that this Bill will be discussed and that it will continue only up to day, we can understand, but on the other hand we are given to understand that additional days would be provided in this session, it becomes another matter. Members who want to speak for, or against it, would not be able to come and participate in the discussion. We started yesterday and many honourable Members had already left, for instance, Mr. K. M. Munshi came here to speak on this motion and he went away and there were many members who wanted to speak one way or the other on this important Bill and if the House could get to know through you—it is for you to say—it is possible for you to do so— that some additional days are going to be provided, that will be really helpful; otherwise, we do not know where we stand with regard to this important Bill.

Mr. Speakers : I should like to know if the honourable the Law Minister is in a position to enlighten us.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : The only thing that I can say is that this Bill will be debated. What would be the next stage, I am quite unable to say, because the question of the arrangement of the business of the Government is entrusted to a Committee of the Government, which is called “the Priorities Committee”. That Committee have assigned these days to this Bill. This Committee will be meeting in the afternoon and be taking its own decision. I am unable to say anything further than that.

Pandit Lakshmi Kanta Maitra : In view of this, I would submit respectfully to the Chair that the Chair has sufficient inherent powers to see that this procedure is not adopted with regard to this Bill unless sufficient notice is again given, to the honourable Members when this motion comes, it is certainly within your competence to say : “I am

not going to allow this motion to come, because that prejudices the right of honourable Members to participate in this important debate." That the honourable Minister cannot make up his mind, is exactly my grievance from the very beginning about the way in which the consideration of this Bill is taken up from time to time during this session. This itself has been a subject of great adverse comment on my part as well as other honourable members. Even today the honourable the Law Minister is not in a position to say if any other day is going to be or not going to be allotted for this important Bill. If that is so, I hope you will sternly turn down any proposal brought at the end of this week if a motion for consideration of the Bill is brought on a very short notice.

Mr. Speaker : Any way that question is at present hypothetical. Today we are going on with the Bill.

Pandit Mukut Bihari Lal Bhargava (Ajmer Merwara): It is obviously very unfair that the Government are not able to make up their mind even today. On 30th March you were pleased to ask the Leader of the House as to what the position was. A specific question was put by Mr. Maitra as to whether the Hindu Code was going to be taken up or not. No answer to that query was given by the Government Bench with the result that on the 31st, for the first time, we knew that the Bill was going to be taken up. Mr. Chaudhuri who wanted to participate in the debate left for Assam on the presumption that this Bill would not come before the House. It is therefore obviously unfair to the members that it should be brought up in this fashion. The Chair has ample power to protect the rights of Members.

Seth Govind Das (C. P. and Berar : General) : You will remember that on that date the Leader of the House announced that very probably we would be adjourning on the 7th April. I raised the question whether the Hindu Code Bill was going to be taken into consideration in this session or not and you, Sir, said that it was not your business to say anything in that matter and that it was for the Government to arrange their business for the House. Now, at this fag-end of the session, when many members are absent, it is not proper to proceed with a controversial Bill of this nature. I would join with the Members who have just spoken and submit that the protection of the rights and privileges of the Members of this House is your responsibility and you have that right vested in you. Therefore I would request you to say to the Government that at this fag-end of the session and without giving

sufficient notice to Members it is not proper to proceed with this Bill. I would request you at least to adjourn the debate on the consideration stage of the Bill this evening, so that this business may be taken up in the next Session of the Assembly, when we meet in the autumn.

Mr. Speaker : Just at present the question is a hypothetical one, because the Law Minister does not say that he proposes to continue the debate. The question as to when, if at all, the consideration motion is to be discussed further, (*Interruption*) depends, as he said, upon the decision of the priority Committee. I shall try my best to see that all 'equitable and reasonable demands of Members for debate are acceded to as far as it lies in my power in the House. On the question of the arrangement of Government business, I think, it is a bit too much to ask me to interfere. The Government are the best judges of priority of their business. As regards this particular Bill, I do not think anything further need come from them, in view of what is said in the House. I believe they are responsive to the feelings of Members. I do not think we need go any further into this matter. We may proceed with the motion under consideration.

Shri H. V. Kamath (C. P. and Berar : General): May I know from you, Sir, who has the last word on the arrangement of business here ?

Mr. Speaker : So far as Government business is concerned, it is -the Government. I have nothing to do with the arrangement of business so far as priority is concerned.

Seth Govind Das : The ultimate authority rests with you. They can bring any business they want to put before the House. But, after all, the ultimate authority is yourself.

Mr. Speaker : At present, it suits the honourable Members to vest it in me I think that responsibility is too great for me. I am not acquainted with all the details and the needs of the Government administration. I do not think I can interfere with their discretion to adjust their business in matters of this kind. The best way is for honourable Members to let the Government feel the pressure of their opinion. Then the things will be adjusted. All I can do is to see that a reasonable debate takes place. From that point of view I shall certainly do what I can.

Seth Govind Das : We are requesting the Government through you.

Mr. Speaker : There are many other channels for Members to do so.

Shri Arun Chandra Guha (West Bengal : General): We should be informed now as to when the House is going to be adjourned. If

this is not done we would find it difficult to make arrangements for our business.

Mr. Speaker : As regards that; the position was made clear by me the other day. I requested the honourable the Prime Minister to give the information and he said that this may go on for a day or two. It is not possible for him also to say definitely, because there may be some urgent measure which they might wish to put through, without stilling discussion. So, that matter also rests with the Members. But I may say that we are not going to sit beyond the 9th April.

11 A.M

Shri Arun Chandra Guha : In that case, urgent matters may be taken up first.

Mr. Speaker : That is a matter of opinion as to urgency.

Maulana Hasrat Mohani (U.P.: Muslim): To remove this difficulty of Dr. Ambedkar I would make a suggestion. I think that any legislative measure involving social reform should not be made part of official business, I could understand a Bill of this kind involving social reform being introduced by Shrimati durgabai or Shrimati Renuka Ray. To thrust an official Bill of this nature on an unwilling public is absolutely unreasonable. I would therefore invite my honourable friend to take courage in both hands and, realising that discretion is the better part of valour, postpone consideration of this Bill and withdraw the Official Bill leaving it to be sponsored at some future date by an ordinary Member who, in consultation with public opinion, may bring forward measures of this kind involving social reform.

Mr. Speaker : The honourable Member need not further argue the matter. It is enough he has made a suggestion.

Mr. Muhammad Ismail Khan (U. P.: Muslim): As the honourable Minister told the House, the priorty for this Bill has to be determined by the Cabinet Committee. Surely we arc entitled to know from him whether he is going to urge for priority for this Bill or not.

The Honourable Dr. B. R. Ambedkar : I do not wish to add anything, All that I want to say is that the Government has no intention of getting this Bill passed by a snap vote.

Mr. Speaker : Mr. Naziruddin will finish his speech now. I do not wish to impose a time limit on speeches. He has spoken the whole of yesterday and I believe had spoken for 48 minutes on the previous occasion. The time taken in all comes to 3 hours and 28 minutes, to

be more exact. I am not measuring his speech by the length of time taken. What I would like him to do is to take into consideration the fact that the present is a general motion for taking the Bill into consideration. It will not, therefore, be either in order or proper to go into the details of every clause. The honourable Member's argument, as I understood it yesterday, is that there are some substantial changes made in the Bill and that, therefore, the measure has to be considered a new or that public opinion has to be consulted in the matter. For developing that argument he need not go into each and every clause of the Bill and suggest that every change made is a substantial change. He need only point out, by way of illustration, a few instances of really substantial changes made. I think that should be enough for the purpose of his argument at the present stage. When the Bill comes up for discussion clause by clause, he will have every facility to move any amendment he likes.

*** Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I am grateful to you for that suggestion. I dealt with substantial changes yesterday but today I shall confine myself to a few more substantial changes. (*Interruption*).

Mr. Speaker : There is one difficulty that I feel about interruptions. They distract attention from the original point and my hands are weakened in pulling up the speaker and bringing him up to the proper scope of relevancy in debate. If there are no interruptions, therefore, the matter will be shortened.

An Honourable Member : But it becomes very dull.

Mr. Speaker : Of course it gives relief from dullness but too much of it is dangerous for the House. Therefore, let there be no interruptions or side remarks because they sidetrack the issue.

Mr. Naziruddin Ahmad : I shall confine myself, Sir, to a few more substantial changes introduced by the Departmental Draft. I shall turn to part III of the original Bill and draw attention to sub-clause (2) of clause 126 of the Departmental Bill which corresponds to sub-clause (2) of clause 124 of the Final Bill. It is a new sub-clause which introduces a new principle, namely, that any transfer of property would not defeat the right of maintenance paid therefrom. In fact, maintenance has been made a statutory charge on the property. Whether good or bad, it is a new matter which has been introduced not by the Select Committee but by the Departmental Committee.

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*C.A.(Leg.)D.,Vol.III, Part II, 2nd April 1949, pp. 2249-76.

Then turning to part III-A of the original Bill which deals with succession, clauses 1 and 2 which are important substantive provisions have been entirely omitted in the Departmental Bill and of course also in the Final Bill. I will not deal with them in detail but leave them for consideration by the Honourable Minister.

Then coming to clause 131 of the Departmental Bill (clause 130 of the final Bill), sub-clause (1) which deals with maintenance is a new matter which introduces a very substantial change. Again clause 133 of the departmental Bill (clause 132 of the final Bill) lays down certain tests; they introduce an innovation of a very substantial nature. Part (b) of sub-clause (2) of this clause is an innovation which corresponds to clause 6(1) of the original Bill, part III-A.

Then parts (g) and (h) of sub-clause (1), part III-A in the original Bill are also important provisions which have been entirely omitted in the Departmental Bill and also in the final Bill. Again parts (g), (h) and (i) of clause 133 (2) of the departmental Bill are very important and are entirely new.

In part III-A the proviso to sub-clause (1) of the clause 6 in the original Bill has been omitted in the Departmental Bill rather unceremoniously. This is omission of a very important matter.

Sub-clause (2) of clause 134 of the Departmental Bill (clause 133 of the final Bill) deals with marriage expenses of an unmarried daughter. This is a new provision which was not in the original Bill.

Then I come to clause 7 of part III-A of the original Bill dealing with the maintenance of a widow residing outside the family house. This has been omitted in the departmental Bill and also in the final Bill.

Therefore in part III-A of the original Bill, there are sins of omission and commission of an important character. I refer to them because I wish to rely not only on the individual changes made but also on the cumulative effect of those changes.

Then I come to part IV of the original Bill dealing with marriage and divorce, corresponding to Part II of the departmental and final Bills. I shall deal only with the salient points. Provisions about marriage have been entirely and radically changed and require some detailed consideration. With regard to sacramental marriage the form of that marriage prevalent in Hindu society is well known. The original Bill left those forms to be applicable according to custom and social

practice. There was no provision in the original Bill for registration of a sacramental marriage as a condition of the validity of the marriage. I shall try to show that the Departmental Bill has introduced such changes. They may be unconscious but the change to me appears to be that no marriage will be valid unless it is registered. Registration has not been made optional as in the case of Muslims, but in this case by the Departmental Bill the optional character of the old formalities have been interfered with and the validity has been made subject to registration; otherwise, as I shall try to show, the marriage would be invalid.

The original Bill, Part IV dealt with this subject. In clause 2 it was laid down that there shall be two forms of Hindu marriage, namely, the sacramental marriage and the civil marriage. Leaving aside the civil marriage, with which I am not at present concerned, "there shall be two forms of Hindu marriage—sacramental marriage and civil marriage". That is what was provided in the original Bill. The forms were left to the well-known custom and well-known requirements of Hindu marriage and provide nothing for registration. The House will be pleased to consider the corresponding provisions in the Departmental Bill. The original Bill merely said that the sacramental form of marriage will be one of the forms of marriage. Details were left to the descretion of the parties.

In Clause 6 of the Departmental Bill which also corresponds to Clause 6 of the final Bill, the following provision is made.

> "Save as otherwise expressly provided herein, no marriage between Hindus shall be recognised as a valid marriage unless it is solemnized either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part."

The original provision was that marriage might be performed in the sacramental form in the usual religious form well known to Hindu society, but in the departmental Bill it is said that no marriage shall be valid unless it is performed in accordance with this Part.

Let us consider the provisions of this Part. We come at once to another part of the Bill, namely, clause 6 of part IV of the original Bill corresponding to clause 9 of the departmental Bill as well as the final Bill. (*An honourable Member:* 'Please note that Dr. Ambedkar is away.') Clause 9 deals with registration of sacramental marriage. In the original Bill it was stated : "For the purpose of facilitating proof of sacramental marriage, rules may be prescribed for the entering of

particulars relating to such marriages in such manner as may be prescribed in the Hindu Civil Marriage Certificate book kept under section 6 of this Chapter."

Babu Ramnarayan Singh (Bihar : General): On a point of information, may I know who is listening to the debate on behalf of the Government ?

Mr. Speaker : There must be someone !

Shri L. Krishnaswami Bharathi (Madras : General): I am taking notes for him.

Mr. Naziruddin Ahmad : The Minister should, in courtsey, be here.

Shri B. L. Sondhi (East Punjab: Genral): The Law Minister is there—just coming.

Mr. Naziruddin Ahmad : The original clause provided for rules made by the Government for the entering of particulars in a register for the purpose of facilitating proof : that is, it left the validity of marriage absolutely intact. It gave additional facility in the matter of proof that particulars of marriages might be registered in the Hindu Civil Marriage Certificate book and this could be provided by rules. This was only to facilitate proof. This was not a compulsory condition, nor any condition affecting the validity of the marriage. All that was laid down was a very usual rule, a very salutary rule, that particulars might be entered in a register and that might be prescribed in the rules. It would be only for the purposes of facilitating proof. It would not affect the validity of the marriage at all. In fact a marriage of which the particulars are not entered in this register would be perfectly valid, but registration would offer, or supply a ready-made method of proof of marriage, and a certified copy of the entry would be taken judicial notice of by a Court of law and much evidence would be dispensed with. But in the corresponding clause in the Departmental Bill, it is like this :

> "For the purpose of facilitating the proof of any sacramental marriage, the Provincial Government may by rules provide *(and here the sting comes at the tail)*—
>
> (a) That particulars relating to such marriages shall be entered in the Hindu Marriage Certificate book....."

In fact the compulsion is not yet complete, but only begins here.

Then, Sir, we come to clause (b) of the Departmental Bill. Subclause (3) of clause 6 of the original Bill says :

> "The making of such an entry shall not be compulsory."

I shall ask you, Sir, to consider the corresponding language of the Departmental Bill. The original Bill—I shall repeat with your permission—is

"That the making of such an entry shall not be compulsory."

Shri Mahavir Tyagi : Does it mean that the married parties will go to the Registrar's House?

Mr. Naziruddin Ahmad : According to the original Bill, the making of such entries is not compulsory. That is absolutely clear. But let us consider the corresponding provision of the departmental Bill:

"The making of such entries shall be compulsory."

Shri Jaspat Roy Kapoor (U. P.: General): In which place ?

Mr. Naziruddin Ahmad : I shall come to that later on. "Which place" is also mentioned. It is at very inconvenient places !

So the original law was that by rule particulars of marriages might be entered in a book for the purpose of facilitating proof, "but the entry shall not be compulsory". But in the revised clause in the departmental Bill, the particulars shall be entered and the making of the entries shall be compulsory in such cases.

And then, what is more, there is sub-clause (2) and clause 9 of the departmental Bill which reads :

"In making the rules under sub-section 1, the Provincial Government may provide that a contravention thereof shall be punishable with fine which may extend to Rs. 100"

The position is a little vague as to whether the compulsory character attaches to the registering officer or is addressed to the party. But more of this later on.

Shri Mahavir Tyagi : Which clause are you referring to ?

Mr. Naziruddin Ahmad : Clause 9(2) of the Departmental Bill as well as to clause 9(2)of the final Bill. In fact it gives authority to the Provincial Government to impose a fine for not complying with it or even a vague suspicion that parties who fail to register or have them entered, will also come within the mischief of this provision. But the matter has not been left in doubt and it is clear later on.

Mr. Speaker : The validity of the marriage is not affected, in which case, where is the substantial change? It is only a matter of detail which, it would be as well for the honourable member to speak on, when we come to clause by clause consideration of the Bill.

Shri Mahavir Tyagi : It is a matter of importance, Sir. In that case it is a great change. The parties will have to be directed to the house of the Registrar instead of the House of the father-in-law.

Mr. Speaker : The scope of the present discussion is with reference to changes in the substantive law as proposed by the Rao Committee and as adopted by the Select Committee. A minor detail of registration is made compulsory. So far as validity of the marriage is concerned, it is not affected at all. I do not want any discussion on that. I do not say as to whether the change is desirable or not but for present purposes a discussion on that would be outside the scope.

Mr. Naziruddin Ahmad : I would like to refer to one or two sentences in that connection as well as on the final Bill. Clause 138—

Power to make rules—(2) sub-clause (ii) reads:

> "The cases and areas in which particulars of sacramental marriages shall be compulsorily entered, and the punishment for any contravention thereof,"

This provides for compulsory registration, I am coming to the question how it affects the marriage. (*An honourable Member :* 'It is in the discretion of the provincial government') It is in the discretion of the Provincial Government no doubt. But the Government is given a new power which it may enforce.

I come back again to clause 6 of the departmental Bill. It also corresponds to clause 6 of the final Bill.

> "No marriage between Hindus shall be recognised as valid unless it is solemnised either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part."

According to the clause in the original Bill these formalities were not required. The "provisions of this part" in the departmental Bill require compulsory rgistration of the marriage. In fact sacramental marriage and civil marriage are brought on a par with each other. In civil marriage of course registration is compulsory. The combined effect of the change of phraseology in clause 6 of the departmental Bill as well as the compulsory requirement of registration would make it appear that a marriage which is not registered—of which particulars are not entered which is made compulsory under this clause—would be an invalid marriage. No marriage shall be valid unless it is done in accordance with this Part.

Shri L. Krishnaswami Bharathi : Where is it ?

Mr. Naziruddin Ahmad : That is my interpretation which is submitted for the consideration of the House. In fact it may be farthest

from the mind of the honourable Law minister to effect this result. He made it quite clear in his speech that the provisions relating to marriage are not compulsory but rather optional. It may be that the effect was unintended. But whether intended or not, the effect is the same. No marriage shall be valid unless it is performed in accordance with this Part, which also carries the liability of a fine for an omission. However reluctant the house or even the author of the Bill may be to put this interpretation, it is yet a question of interpretation and it is not a question of sentiment. The point is whether this interpretation is valid. If that is so, it introduces a very important change. To provide, though indirectly that a marriage would be invalid unless it is registered would be a dangerous proposition and it would lead to wholesale breaches of the law. The registering officer may live miles away from parties living in inaccessible regions, and at this stage of the civilisation of our country, especially for the backward people, this provision would be absolutely tyrranical and meaningless.

Shri L. Krishnaswami Bharathi : If you would permit me,

Sir .....

Mr. Speaker : Let there be no discussion on the merits of the argument.

Shri L. Krishnaswami Bharathi : Only for the purpose of clarification that I rise.

Mr. Speaker : If we enter into clarification and further discussion, it would be an unending speech. The point is that the honourable Member is putting his interpretation. I have drawn his attention to the fact that, it does not affect the validity of the marriage. If he wants still to persist in that line of argument, let him do so. That will cut short the speech.

Shri L. Krishnaswami Bharathi : If you would permit me, Sir, there is only one point which he may clarify. The clause begins with the words "For the purpose of facilitating the proof of any sacramental marriage ....."

Mr. Speaker : That point is quite clear to my mind. I put it to him though not in that form. I pointed out to him that this does not affect the validity of the marriage at all. Still he thinks it does. How can we go on convincing him ? Let him proceed now. That would be the shortest way of having his say before us. Otherwise we shall have to discuss with him every provision in respect of which, he is giving his inferences. When honourable members are hearing his speech in

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Speaker : Let there be no asides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An Honourable Member : Close your mouth.

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

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

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

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

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

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

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

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

Shri Mahavir Tyagi : You are casting aspersions on women.

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

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

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

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

Shri Mahavir Tyagi : What is your experience ?

Mr. Speaker : Order, order.

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

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

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

An Honourable Member : Quite right.

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

Babu Ramnarayan Singh : More than that.

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

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

Mr. Speaker : Order, order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "*Aja juddhe, krishin sradhhe, prabhate megharambarah,*
> Dampati kalahaschaiba, babharambhe laghukriah."

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

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

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

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

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

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

Pandit Lakshmi Kanta Maitra : That is sheer nonsense !

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

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

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

Babu Ramnarayan Singh : In some cases.

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

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

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

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

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

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

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

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

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

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

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

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

Babu Ramnarayan Singh : No.

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

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

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

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

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

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

Some Honourable Members : No, no.

Some other Honourable Members: Yes, yes.

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

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

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

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

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

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

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

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

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

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

Mr. Speaker: I think there is a quorum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Speaker : It is obvious.

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

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

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

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

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

his report deserves careful consideration at the hands of the House. The opinions are again classified according to Provinces as according to subjects. With regard to the effect of the evidence, according to Dr. D. N. Mitter the opinion on each point is preponderatingly against the Bill for codification, for divorce proceedings and for other matters. The opinion of the public was directly against the codification. These opinions and evidence are preponderatingly against the principles of the Bill. The Hindu Law Committee Report is only a majority report. It was definitely opposed by Dr. D. N. Mitter but the other Members thought it fit to stick to their original Bill amended in slight respects here and there, not according to public opinion, but according to their own ideas. I therefore submit that the Bill has been framed in direct defiance of public opinion. That is the basis upon which my argument stands. Though Mr. Krishnaswami Bharathi said that the public opinion is behind the Bill, I venture to submit that public opinion is against it.

An Honourable Member : Question.

Mr. Tajamul Husain : No, not at all. It is for the Bill.

Mr. Naziruddin Ahmad: So far as the written opinion is concerned, it is definitely against the Bill.

I submit, therefore, that public opinion has not been properly consulted as a democratic Government ought to do. In fact, this Bill is a negation of democracy and it is conceived under circumstances which no longer prevail today. A full-fledged democracy is now in operation and public opinion should be taken into account and followed in giving effect to legislative proposals. I submit therefore, that so far as written opinion goes it is against the Bill, but what about the unwritten opinion? We have a large number of protests lodged in your own office and we hear of proceedings of large number of meetings. In fact, we had meetings in the very heart of this city. The meetings were largely attended and many honourable Members and also the Honourable Minister for Law were invited. Some Members attended but the Minister for Law did not.

Babu Ramnarayan Singh : He did not have the courage to attend.

Mr. Naziruddin Ahmad : He did not think it necessary to attend, because it seems to me that public opinion is not the criterion or his guide so far as this Bill is concerned. In fact, Dr. D. N. Mitter gave a clear analysis of the opinion. The Honourable Minister for Law said that he would quote an earlier of Dr. D. N. Mitter to contradict him.

The Honourable Dr. B. R. Ambedkar : What did the honourable Member say, I did not follow ?

Mr. Naziruddin Ahmad : That he would quote an earlier writing of Dr. D. N. Mitter to contradict his present report. We have his earlier writing as well as his later writing and I have considered both.

The Honourable Dr. B. R. Ambedkar : His later writing I have not seen. What is it ?

Mr. Naziruddin Ahmad : Later writing is in the report.

The Honourable Dr. B. R. Ambedkar: That you call later writing. I thought it was something after this.

Mr. Naziruddin Ahmad : The question is what was his earlier writing and what was his present writing and is there any change and if so what. He had long ago written a pamphlet.

The Honourable Dr. B. R. Ambedkar : A pamphlet ?

Mr. Naziruddin Ahmad : A book.

The Honourable Dr. B. R. Ambedkar: I thought you said pamphlet just now.

Mr. Naziruddin Ahmad: Give in any name you like. I do not quarrel with the name.

The Honourable Dr. B. R. Ambedkar : How big is that book ? Have you any idea ?

Mr. Naziruddin Ahmad : You will have it in the Library.

The Honourable Dr. B. R. Ambedkar : You call it a pamphlet. How big is that pamphlet ?

Mr. Naziruddin Ahmad : If I am to be cross-examined, I should be put in the witness box and I will then answer.

The Honourable Dr. B. R. Ambedkar : I should like to know that my friend has ascertained the facts before he refers to them. If it is a pamphlet I should be very much surprised. The book is a book of 700 pages, somewhere about that.

Mr. Naziruddin Ahmad : The most important thing is not the size, but the view expressed therein.

The Honourable Dr. B. R. Ambedkar : Yes, what was the view?

Mr. Naziruddin Ahmad : The view expressed therein was that the rights of Hindu women should be better safeguarded and given better rights. I cannot repeat everything to the honourable Minister because I do not like to trouble the House and I do not like to speak louder

than what, I am doing. In the present opinion he has opposed the Bill and the Honourable Minister evidently had his earlier writing in view and that is taken advantage of by the majority Members. I submit that the reason for the change of opinion has been given by Dr. D. N. Mitter himself. If change of opinion is a crime, blind adherence to an opinion, although it is proved to be wrong, is a worse crime than change of opinion based on reason. Dr. Mitter clearly expressed an opinion in favour of giving more rights to women. I have read the passage in Appendix II that the Government gave an undertaking to the people that the Bill will be re-shaped in accordance with public opinion. That was the thing that trouble Dr. Mitter. In fact, he found that his individual opinion was far ahead of public opinion in India which was definitely against it. So he has referred to this passage in the notification declaring the intention of Government to change the law in accordance with public opinion. Dr. Mitter was faced with a volume of opinion against the Bill and he changed his opinion. This is a legislation which affected the whole country and it was this reason which induced him to go against the Bill, because this is the public opinion. There is no illogicality in giving up one's personal opinion in deference to public opinion. I believe the Honourable Minister and other Ministers too have their personal opinions, but they have to subordinate them for the collective good. We have often heard Ministers speaking against their personal conviction. This is neither improper nor wrong. It is perfectly natural. Here Dr. D. N. Mitter had accepted a position of great public responsibility with the express object of ascertaining public opinion and changing and re-shaping the Bill in accordance therewith. I ask : is there anything improper if Dr. D. N. Mitter changed his opinion ? He accepted a job, and what was it ? To ascertain public opinion, and public opinion was against the Bill. He himself was present when the evidence was taken and there is one passage in the report on oral evidence which is very significant which has been specifically referred to. When the Committee was in Lahore and was sitting...

The Honourable Dr. B. R. Ambedkar : They were greeted with black flags ?

Mr. Naziruddin Ahmad : No black flags ; something more. A large number of ladies, thousands—I do not remember the exact number—I do not wish to trouble the House with the exact number.

Mr. Speaker : What year was it in ?

Mr. Naziruddin Ahmad : It was in 1945 in connection with this enquiry. They went to Lahore and a large number of ladies came and absolutely blocked the progress of evidence. They said, "We do not want it. It is not to our benefit. It is against our idea."

Babu Ramnarayan Singh : Hear, hear.

Mr. Naziruddin Ahmad : In fact, the situation was so grave, that this gentleman when he was faced with the sad spectacle of thousands of ladies opposing the Bill, he could not proceed and it was difficult to repress them and their sentiment and so further evidence was absolutely stopped. This is what he has referred to. If he is guilty of inconsistency, he is certainly to be credited with some amount of honesty.

Babu Ramnarayan Singh : Hear, hear.

Mr. Nazruddin Ahmad : Does consistency lie in sticking to one's opinion although it is proved wrong ? This is inconsistency. This is doggedness. This is neither good nor fair. This gentleman when found that not only male opinion but female opinion was absolutely against him, he said he was also against it. Would it be fair or proper on anybody's part to quote that stray personal opinion of his ? If so, one could quote writings and speeches of the honourable Minister himself against him. This would not be fair. Every writing and speech has to be taken in the context. It may often happen that we have to act in public capacity and therefore, for that purpose, we have to sink our personal opinion. So Dr. Mitter acted patriotically and courageously in giving up his personal opinion in deference to the opinion of the public. In this Dr. Mitter performed a patriotic and obvious duty, and no blame should be attached to it. On the other hand, the other respected Members, what did they do ? I do not wish to be hard upon them, but they all of them, though they promised that the Bill would be considered in the light of public opinion, they stuck to their own opinion, and actually taunted Dr. Mitter for having changed his opinion. Is it to be, Sir, that we should never change our opinions ? If that be so, then mankind would cease to be rational. We have got to change our opinions.

3 P.M.

Mr. Speaker: Order, order. May I tell the honourable Member that on each point he need not necessarily go into the general principles and all the details. He may just invite attention to the point and then go to the next point; because if he carries on like this—he has now gone on for nearly two days—there will be no end to this discussion.

And I do not propose to allow him to go on in this manner. He must bring his remarks to a close within a reasonable time, and I think another fifteen minutes would be quite reasonable.

Mr. Naziruddin Ahmad : I bow down to your decision. I hops, Sir, that these fifteen minutes will be entirely mine.

Mr. Speaker: Yes, he may finish by 3-15.

Mr. Naziruddin Ahmad : Next I want to emphasise the fact that we are a democratic body. We are working as a democratic body. We cannot say that democracy is unfit for our society. It is democracy that has brought us into being. That democracy was sufficient to wrest power from the British Government. That democracy is sufficient to empower us to frame our Constitution. And I say that democracy would be intelligent and competent enough to understand its own interests in the matter of the Hindu Law. Therefore there should be no shirking, no by-passing, no flouting of public opinion. Where is the harm in ascertaining public opinion ? In fact, the Bill, I submit, has been mutilated. It has been interpolated upon. I do not mean to say there has been dishonest interpolations, but honest interpolations, but they are not the less interpolations. There have been interpolations in the Bible—honest interpolations. There are great authorities pointing out that fact. So, I say, there are interpolations in the Bill. The Bill, however, was presented to the Select Committee with the guarantee that there was no serious change, and that some changes made had been noted by the Members. Yet, is it possible, or practicable, Sir, for any one unaided to note all the changes ? In fact, all these changes, it is impossible to take note of. And therefore, the Select Committee was told, and they were asked to take it, that the Departmental Bill was merely a reproduction of the original Bill, and that no substantial changes had been made, and therefore, they failed to note and consider the changes. That is not their fault. In these circumstances, the Select Committee, although they tried their best, unconsciously, I submit, they must have omitted to note many important changes, on account of the guarantee. And then, Sir, if that is so, if there are so many changes, and when these changes are substantial, then the guarantee given by the majority of the Select Committee that the Bill was not so changed as to require re-publication is only the usual guarantee. They said that the Bill had not been so altered as to require, under Standing Order 41(5), any re-publication and that the Bill be passed as amended by the Select Committee. This is only the usual stock

certificate. I ask in all seriousness, is it contented, in the light of the disclosures of changes made that the Bill has not been substantially altered ? On the original Bill we have not got public opinion, and what public opinion we procured, was against it. We have, therefore, got to ascertain public opinion. And then, the Bill was sent to the various Provincial Governments for opinion. The opinions of the various Governments have not even been referred to in the House. They are collected and circulated to the Members. I shall, however, confine myself to the opinion of the Government of Bengal. I assert without fear of contradiction that in Bengal the opposition is the greatest. You propose to abolish the *Mitakshra* system of inheritance and do honour to Bengal by accepting their theory of family life. In Bengal you have the greatest objection.

An Honourable Member: Objection is from everywhere.

Mr. Naziruddin Ahmad: Of course, from everywhere there is objection, but the greatest objection is from Bengal. It is the most persistent, and so very authoritative. The whole of Bengal, including some educated and cultured ladies think that the Bill is not wanted there. In fact, many ladies like the wife of the late Sir Asutosh Mookerjee, the mother of Dr. Mookerjee, here, lady Ranu Mookerjee, wife of Mr. B.N. Mookerjee, and a host of other ladies have opposed this move.

Dr. Mono Mohan Das : Who are the other ladies please ? Please name them also.

Mr. Naziruddin Ahmad : I have to respect the request of the Chair to finish soon. I cannot give my honourable friend preference over the request of the Chair. Sir, the names are there in the report. My honourable friend's request to name them shows that he has not read the report. It is a pity that this volume of opinion has not been read. It is a pity that the Department has not supplied the report to all. It is a pity that private Members have to undergo all the labour and expense to collect the information and to supply the House with the information. But the names are on record, and it is useless for any member to ask questions about facts which are on the record. It is pity that I have got to refer to this matter.

Well, Sir, I was submitting that there is lot of opposition in Bengal. There are five High Court judges of the Calcutta High Court—and one of them now adorns the Federal Court and they are against it. Their opinion is to be found in the Report also, and it is referred

to in Dr. Mitter's report. Then there are ex-Judges of the Calcutta High Court. One of them is Mr. N. C. Chatterjee, and he is now a Judge of the High Court, and he was against it. The Hindu Mahasabha was then under the Presidentship of Dr. Shyama Prasad Mookerjee and it opposed the Bill, evidently, with the consent of the President, Dr. Mookerjee on a major matter like this. And then there is Dr. R. B. Paul, a distinguished jurist of continental fame, and he has opposed it. Their opinions are before us. In fact, in the face of all this opinion in Bengal, I am surprised that a Member from Bengal should have asked for names.

I submit, therefore, Sir, that the Bill should go out to the public for eliciting public opinion. If Hindu opinion is against it, why should you thrust upon it a law which is not wanted by them ?

An Honourable Member: It is dictatorship.

Mr. Naziruddin Ahmad: Yes, it is sheer dictatorship. There is the fear that if it is sent to the public before the elections, possibly it will lead to complications. But do you know what complications will come up if you pass it before the elections ? The illiterate people will get furious. This Bill will dislocate their lives. It is not easy for them to change their lives all at once under the dictator's command. Even in Russia, Lenin did not go so quickly or remorselessly as we seem to be going here, in utter disregard of public opinion. There is in Russia a desire and a pretence to respect public opinion. But here there is no such things. It is sheer dictatorship born of fear that if the Bill goes to the public it will be rejected. I find it is asserted that the public are in favour of it. If so, why not be public arm you with the authority to pass the law ? Sir, it is injurious to the Hindus in general; it is injurious to the ladies in the larger interests and it is injurious to the public at large, and it is no use forcing your opinion upon an unwilling public. Had it not been a matter of personal interest any one is entitled to enforce his opinion, but having come here as the Minister of Law in a democratic Government and basing their authority on public opinion, is it fair and proper for them to flout that public opinion and to bypass it, to circumvent it or avoid it ? It is a devious method, a circuitous course which is not warranted by any system of democratic Government. Why should you not go to the people if the law is favoured by them ? Are the people so backward in their ideas that they will not be able to determine what is good or bad for them ? The question is not what is good in the

abstract, but what is good in the circumstances, and that depends on local conditions. There are certain practices which are considered to be good and there are others which are not and you make every body uniform; you are trying to make all the people uniform. The Honourable Minister for Law should try to make everybody as intelligent and as forceful as he is. Why should you stop at inequality; inequality is not bad. It is nature that there should be inequality in diversity. India is a big continental countries and it has developed according to its own genius and each province has a distinct culture of its own and why should you by one stroke of the pen remove all this and make the law the same? In fact, the great Hindu law-givers, they were extremely...

The Honourable Dr. B. R. Ambedkar : This is only a peroration and not an argument.

Mr. Naziruddin Ahmad: They had tolerance and they did not enforce their law by force. A study of *Manu Smriti* will show that he never enforced his law. He said that the law should be enforced subject to the custom of the locality. That will be found by any one who has read it and therefore, the Hindu law givers did not like the law should be uniform. Their method of propagation of their law and their civilization was not by force, but rather by persuasion and they allowed free scope—I speak with authority, having read the whole thing; they allowed their law to spread on their own merit, not by their force. Local custom plays not only an important part now, but played an important part in the time of Manu and that is the reason why law is different today. It is an organic method according to local circumstances that leads to this difference of opinion. In fact differences are not bad. It is not a small country; it is a big country with all the attributes of a continent and this diversity as a matter of fact should not be done away with without adequate and careful thought.

Sir, Mr. Kamath compared the present Bill to a new *Smriti,* Dr. Ambedkar's 138th *Smriti.* I think this is not a *Smriti* at all, the *Smriti* proceeds from the *srutis.* There is a pretence to agree with the principles of these *srutis.* This is a Bill which is not a *smriti* but a new *Veda,* (*Pandit Lakshmi Kanta Maitra* : 'It is *vismriti* !'). It is *Vismriti* i.e., forgetfulness of the past. All sacred laws and customs, rules, laws, decisions, principles of the Privy Council are brushed aside by one stroke of the pen by Dr. Ambedkar himself in defiance of the report of the Rau Committee. Everthing is gone. It is *Vismriti*

as Pandit Maitra with good humour suggests. It is *vismriti*—absolute forgetfulness. It is a new *Veda*. There are four *Vedas*, the *Sama Veda*, *Rig Veda*, the *Yajur Veda* and *Atharva Veda*. I think the new *Veda* should be called *Dr. Amba Veda* and this is the fifth *veda* in utter defiance and disregard of all the four *Vedas* which it supersedes. Sir, I thank you.

* **Pandit Mukut Bihari Lal Bhargava :** Mr. Speaker, Sir, we have been discussing the Hindu Code Bill from yesterday. We had discussed it in February also. Before I proceed to discuss the merits of this measure, which is admittedly of a highly controversial nature, which aims at the utter demolition of the structure of Hindu society. I would like to put on record my emphatic protest against the way in which the Government is pursuing this measure of vital importance, a matter of life and death to the Hindu Society. It is well known that this Bill was rushed through in the legislature almost on the last day, that is on the 9th of April 1948, when it was not discussed even to the extent that a very ordinary measure is usually discussed in this House. Further, in this session, we find that instead of giving consistent consideration to this matter the Government on the plea of want of time due to the Budget session, wishes to rush this Bill through this House. I would ask respectfully, though humbly, is it fair to the House that a measure of this vital importance, an equal of which, I submit, has never been on the anvil of this legislature since its inception should be rushed through in this manner? However, it is for the Government to decide and I feel it my duty to sound a note of warning to the Government that it should pause and consider as to what is the haste and hurry about this matter, and why in preference to a number of very important and emergent measures, this Bill is being rushed through. I would ask what will happen to the Hindu society if the Hindu society could survive the onslaught of centuries of foreign aggression and foreign rule ? Will it die out of existence if this measure is not brought on the statute book ? I submit, Sir, this unusual haste and hurry is due to the fact which was hinted by my learned friend Mr. Naziruddin Ahmad, that my honourable friend, the Law Minister is now sure that the public opinion of Hindus is behind the measure. I take courage even to submit, Sir, that the weight of public opinion is against the measure. What is the criterion to judge whether the public opinion is in favour of this measure or against it ? The only criterion that can possibly be applied to is: What is the weight of

* C.A. (Leg.) D., Vol. III, Part II, 2nd April 1949, pp. 2276-89.

opinion that has been on record ? I should submit in all himility that the weight of opinion that was sounded by the Rau Committee was predominently against every section of this measure. Consequently, Sir, without any fresh sounding of public opinion, it would be presumptuous on the part of any person, including the Law Minister, to claim that this measure has the support of public opinion in the country.

The question arises where is the necessity and what is the utility of the codification of Hindu law ? Who demands the codification of Hindu law ? We know, codification is essential only in two conditions. If on a particular point there is a serious conflict of judicial opinion, it becomes essential for the legislature to intervene and clarify the ambiguity. This is one condition. The other condition is that public opinion wants to have a change in the law. These are the only two conditions which could justify the attempt at codification of Hindu law. In this particular case, I would submit that neither of the conditions exist. So far as the main principles of the Hindu law are concerned., I venture to submit that they are well understood and well settled. In many text-books of Hindu law the principles of it as deducible from *Smritis* and *nibandhas* as orally interpreted and construed by the judicial courts in India, have been published. It will be quite obvious that on every intricate point of Hindu law there have been clear interpretations. It has been pointed out by the Law Minister, in his speech while moving for the consideration of this Bill, that Hindu society or the joint families as was originally conceived in Hindu law, have by judicial opinions been shorn of their characteristics. But does this afford any justification for this Code ? The judicial opinion of the Privy Council and of the High Courts have by now laid down the principles which are not open to any doubt at this stage. Whether it may be the powers of the *karta* or manager of a joint Hindu family when he happens to be a non-father, whether it may be the powers and functions of a manager of a joint Hindu family as father, his rights and powers stand well defined in Hindu law. The disputed doctrine of the pious obligation which for some time was the subject matter of serious conflict of opinion between the different High Courts and the Privy Council has also been settled. And we know what are the duties of the son and we know the extent of his liability for the debts of his father. Similarly in the spheres of marriage, etc. the Hindu law is quite definite. The question then arises, is there any opinion and overwhelming public opinion in the country which requires the

Government to codify the Hindu law ? My respectful submission is that there exists none and there is no justification for this attempt at codification of Hindu law.

So far as the history of codification goes, this is not the first time that an attempt has been made. I would respectfully invite the attention of the House to the various efforts that have been made during the British rule for the codification of Hindu law and submit that on each such occasion the matter was deferred and for very cogent and sound reason. As early as 1833, a Commission was appointed by Royal Charter. In the year 1853 a Law Commission was appointed. The reports of these Commissions published in the year 1856 turned down the proposal for the codification of Hindu law on the ground that it would be a vain attempt and that it would stunt the growth and development of Hindu law. Similarly, in the year 1861 and again in 1921 the Secretary of State for India in the former case and the Governor-General of India with the sanction of the Secretary of State in the latter case appointed Law Commissions. Their decision on the point of codification was identical with the findings of the Law Commissions. On 23rd March 1921, one distinguished Member of this House tabled a non-official resolution requiring the appointment of a Commission for the purposes of codifying Hindu Law. When that motion was debated in this House the Department of Law was in the hands of a very distinguished scholar on Hindu Law and a jurist of eminence, I mean Dr. Tej Bhadur Sapru. The motion whether codification was essential or not, was necessary or not, would be to the good of Hindu society or not, was hotly debated. I would respectfully invite the attention of the House and of the Honourable the Law Minister to the reply given on behalf of Government by Sir T. B. Sapru who was himself an authority on Hindu Law. He pointed out that the codification of laws of the personal laws of the community was not an easy matter, that it was a stupendous task and one which would entail the best energies of the best legal talents for centuries. He invited the attention of the House to the German Code which was drafted and codified after 50 years of labour, from 1834 to 1896 and to the fact no less than three Commissions drafted the Code. He pointed out that it was not until 1896 that the final form of the German Code was reduced to writing and after a continuous hard struggle for and against codification between the two sections of eminent German jurists represented on the one hand by Savogry and on the other by Thebaut

and that even then it took no less than 4 years. Thus, it was only in 1900 that the Code drafted after almost 50 years of continuous labour was sanctioned by the Imperial German Government. Similarly, Sir, the Swiss Code in the continent of Europe as well as the other Codes were the result of continuous efforts for a number of years by the best legal talents of the country. Compare those territories and their condition with the conditions of India and the ancient history of India and the continuous streams of law that have been flowing into the development of Hindu law from ancient times upto the present time. I would submit that it will be a vain effort to codify the Hindu law. It will be futile to attempt codification of the personal laws of the Hindus. What is the source of this law I would respectfully ask. It is obviously not human in the sense that no human power ever attempted to promulgate Hindu law. The sanction behind the law was not of a sovereign power but a moral sanction of learning and the result of meditation of the sages. It is difficult to trace its origin; the *smritikars*—138 as they are said to be—did not purport to create the laws. They based their *smritis* on the *Vedas* and we know the *Rig Veda* is the oldest book in the world. Even Vigneshwar and Jimuta Vahana, the learned authors of the two main treatises which have held sway in India, did not attempt to codify the Hindu law or create new law for society; they only based their commentaries upon the *smiritis.* And during the long years of British and Muslim rule what has been done is simply an interpretation of the well known principles of Hindu Law. Now why should there be any codification of Hindu Law ? If the German and Swiss nations—which are no insignificant compared to India—took 50 or 60 years to bring about a satisfactory code to control their relations, why should we in India, where the origin and source of Hindu law are shrouded in mystery, try to codify the law ? We are told that it is sought to itroduce uniformity in this land of diversities ; the other reason advanced is that women in Hindu society have been subjected to age-long oppression and tyranny at the hands of men from which they have to be relieved. With regard to uniformity I submit that it has not been achieved in this present measure and cannot be achieved at all.

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

Even in regard to the law of succession, in cases where the rule of primogeniture exists by custom or in case of grants or *inams* they

have said that the rules of succession as laid down in this measure would not apply. Similarly in clause 7 although marriage between *sapindas* has been prohibited, it is said that it will be subject to local custom and so allowed where it prevails by custom. So the ghost of uniformity which haunts the draftsman of the measure is still there, and the so called freedom from slavery of women ends in nothing. I submit that those who want to deal with Hindu law and the place of women in Hindu society should look at the question not through Western glasses but through the glasses of our own civilisation. We must know how our own law-givers approached these very difficult and intricate questions. The views prevailing in eastern and western countries on these questions are diagonally opposite. Our life, we believe, has connection with our past life and will have connection with our future life; and therefore the rules of law will stand on a special footing. That is why our sages approached these questions from the point of view of the well-being of Hindu society as a whole. And in attempting to frame our law we have to keep in view the ideals that motivated our law givers in framing the law in a particular manner. Unless we can do that we cannot appreciate its value.

Sir, I would not mind if the Law Minister had honestly declared that this measure stands on its own merits, moulded on his ideas of Hindu society as it now exists. But what has pained me is that he asserts that its provisions are in consonance with the accepted principles of Hindu Law. It is well known that Satan can quote the Bible. I submit that every provision of this measure—whether in relation to marriage or divorce, adoption or inheritance—goes against the fundamental principles of Hindu law. Then the result that I envisage is not a very happy one. In fact every House in Hindu society will be converted into a hell in which there will be a quarrel between the brother and sister, between the husband and the wife and between the children and their father. The very fundamentals of Hindu society are sought to be demolished by this law. It is a question of vital concern and there must be a plebiscite on it or a referendum to find out whether public opinion in the country is in favour of this measure or against it.

I was submitting that there was no necessity for the codification of Hindu Law. The question then arises whether the uniformity that is sought to be achieved by the enactment of this law will be achieved if it is brought into force ? What is our experience of the statutory

law ? The Government of India in the year 1923 appointed a Civil Justice Committee and that Committee after going through the various statutes made a recommendation that the Transfer of Property Act, the Contract Act, and the Law of Evidence should be modified and their revision should be taken in hand by the Legislature at an early stage. Has the Legislature found time for it ? What is the result ? The result is that the law is being administered in accordance with the provisions, which according to the authority itself; has outlived the utility for which they brought it into existence. That will be the condition if the Hindu Code is brought on the Statute Book and is made a rigid code upon which the rights of the people will depend. The Hindu law will lose its vitality, its elasticity, its adaptability to the prevailing conditions and will be reduced to immobile rigidity. May I know whether the object of reducing conflicts and of fighting differences of opinion will be achieved by the codification of Hindu Law ? I dare to suggest it will not and our experience of the various pieces of legislation leads one to support my conclusion.

Take for instance, the Hindu Law Remarriage Act which was enacted in 1871. Now, Sir, it is a very simple piece of legislation but has there been an unanimity of opinion in respect of the construction of the various provisions of that Act ?

Shrimati G. Durgabai (Madras : General): Are you opposing the Widow Marriage Act also ?

Pandit Mukut Bihari Lal Bhargava : I hope my friend will have the patience to hear me. We must learn tolerance and patience for opposite opinions. My point was that mere bringing in of an enactment does not lead to uniformity or to the resolution of a conflict of opinion. Even in the interpretation and the construction of the provisions of this Hindu Widow Remarriage Act of 1872, we find that there is a serious conflict of opinion between different High Courts about the construction of section 2. The question arises whether a woman who remarries according to customary law loses her rights in the property of her husband. This is the point, and we have the opinion of the Allahabad High Court and Oudh Chief Courts to the effect that merely because she remarries according to custom she does not lose her right in her previous husband's property. The other High Court has taken the other view. Similarly, in this Act there has been a serious conflict of opinion upon the interpretation of the simple word "sister". Some High Courts say that the word "sister" does not include a "half

sister" : while the Nagpur Chief Court, after an elaborate consideration of this word came to the conclusion that it is included. My submission is that in view of the above, the difficulty that exists today in the construction of the Hindu Law will not come to an end by the fact that the Hindu Code Bill is there.

Shri L. Krishnaswami Bharathi: Do you mean that the conflict should be permitted to continue ?

Pandit Mukut Bihari Lal Bhargava : I say that even if this Bill becomes an Act, the conflict will be there and it will be open to the High Court to interpret its different provisions in a different way. The divergent opinion and the divergent points with regard to the Hindu Law will not be resolved because it will be open to the High Courts and to the Supreme Court to give their construction on any particular provision and the conflict is bound to arise as our experience of the previous legislation shows. My respectful submission is that it is a vain and futile attempt to codify the Hindu Law and any attempt in that direction is bound to deprive Hindu Law of its mobility, its elasticity and its vitality, which by no stretch of imagination is advisable in the present circumstances.

My next point is a very important one. How did the present legislation originate and did the circumstances in which it originated justify its being pursued any further ? I would respectfully invite your attention that in the year 1941 the Hindu Law Committee was appointed and it considered the question of the codification of Hindu Law by compartments and two Bills were prepared by this Committee. One was the Bill concerning the Intestate Succession of Hindus and the second was the law relating to Marriage. When these two Bills came before the Legislature there was a joint meeting of the two legislatures (at that time our Legislature was of a bi-cameral character) and it was decided that it would be better if the Hindu Law was enacted as a whole rather than by compartments, and with this object in view the present Rau Committee came into existence.

Now, Sir, when a lady member addressed the House—of course a zealous enthusiast in favour of this piece of legislation—she said that this piece of legislation had been before the country for a number of years—say for 10 years, and the Rau Committee has examined thousands of witnesses and has had an extensive tour of the country. I respectfully submit that there was little truth in the declaration made by the lady because let us examine what was the quantum of evidence

that was before the Committee. And what was the weight of that little quantum of evidence ? The Rau Committee which came into existence on the 20th January 1944 drafted a Bill which was circulated to selected and distinguished lawyers for opinion. After their opinions had been received the Committee decided that the draft which they had originally prepared should be circulated throughout the country. The Bill was translated into Indian languages and about 6,000 copies were distributed. Opinions were invited on the 5th August 1944 and the opinions were to be submitted by the 31st December 1944. After the opinions had been received the Committee toured the country. I would like the House to note the extensiveness of the tour undertaken by this Committee. It visited the leading towns and cities of the provinces and as far as I remember it is not more than a dozen—Allahabad, Bombay, Calcutta, Poona, Patna, Lahore and others. This was the extensive tour of the Committee. What is the population of these few leading towns and cities as compared to the total mass of population of the country ? Can the tour undertaken by this Committee for the purpose of examination of witnesses in these cities by any means give an indication of the real feeling of the counrty on this Bill ?

What was the extent of the evidence recorded ? Let us see. In all 121 witnesses and 201 associations represented by about 257 persons gave evidence. This was the total evidence taken. May I venture to ask a very pertinent question: Is this by any stretch of imagination sufficient evidence, considering the vastness of the country and considering the fact that the real India, the real Hindu India resides not in the cities but in the villages. They are agriculturists who represent 90 per cent, of the population. Can it be pretended by any stretch of imagination that the examination of witnesses by this Committee was in any way sufficient and commensurate with the vastness of the country and with the great divergences of opinion prevailing in the different provinces ? I respectfully submit that it was not.

Let us further analyse the result of that evidence. My submission is that on every basic point which forms the basis of the present Code the opinion was predominently and overwhelmingly against any change. Look at for instance one basic doctrine that is propounded within the four corners of this piece of legislation—introduction of simultaneous heirship of sons, daughters, widows etc.

Mr. Deputy Speaker : A widow is a simultaneous heir today under the existing law.

Shri L. Krishnaswami Bharathi: Even that he is opposing now. Perhaps he wants it to be repealed.

Pandit Mukut Bihari Lal Bhargava: For the introduction of simultaneous heirship of daughter with son the witnesses number only 78 and the number of those against was 215. Regarding conversion of widow's limited estate as a female heir into an absolute estate the opinions for were 49 and against 107. In case of divorce options for were 112 and against 119. In case of adoption and the changes that are introduced opinions for were 36 and against 38. On other points the opinions against change were overwhelmingly larger than for it. Where is the justification, I ask, for pursuing this legislation ?

Some Honourable Members: No justification.

Pandit Mukut Bihari Lal Bhargava: It is claimed by a number of Members of this House that public opinion is over-whelmingly in favour of this piece of legislation.

Shrimati G. Durgabai: What about monogamy ?

Pandit Mukut Bihari Lal Bhargava: I will come to that also at the proper stage. My submission is that if this is a democratic legislature, if this legislature claims to legislate in consonance with the predominent volume of public opinion in the country, the only course for it is to throw out this piece of legislation, because whatever public opinion there was in the country distinctly points out that it is against it. I am sorry I have not got with me the particular newspaper in which the opinion given by the Law Minister was published. It was a few days before we commenced the consideration of this measure in February and he took his stand not upon the quantum of evidence in his favour, nor upon the public opinion in his favour but upon its quality. That was an open admission by no other than the Law Minister himself that the weight of public opinion so far as number was concerned was against him. If it is a fact that a few individuals, however distinguished they may be, because they wish this legislation to be thrust upon the country, it cannot be accepted. The only criterion of public opinion is the public opinion taken by the Rau Committee. There is absolutely no other criterion upon which it is open to any Member of the House to say that public opinion is in favour of this piece of legislation and not against it. Similarly, we are receiving a number of representations from different bodies .....

Babu Ramnarayan Singh : Daily.

Pandit Mukut Bihari Lal Bhargava: ..... from different distinguished High Courts and other Civil Judges also, from Bar associations in different parts of the country. As far as I have been able to go through the opinions very few persons. I find, favour the enactment of this piece of legislation and public opinion is overwhelmingly against it.)

The next point is this. Even assuming that public opinion is not so far of a decisive character where is the necessity of pursuing this legislation in the present legislature ? As has already been pointed out, and I will not repeat the argument, but I would respectfully submit that the present legislature is to frame the Constitution as also to legislate on emergent matters about which legislation is absolutely essential. It can by no stretch of imagination be asserted that the Hindu Code Bill is a piece of legislation that the Government should not pursue this piece of legislation in the teeth of public opposition in the country.

4 P.M.

I would now proceed with the examination and scrutiny of the various provisions incorporated in this piece of legislation. As I had remarked I feel—and I feel honestly—that the fundamentals of then provisions that stand incorporated in this piece of legislation are fatal to the existence of Hindu society as envisaged by our sages and therefore it is my painful duty to oppose this measure tooth and nail provision by provision. The question arises what are the basic changes that are sought to be brought about in Hindu society through the medium of this piece of legislation and how far those contemplated changes are in consonance with Hindu ideology and Hindu ideals. My respectful submission is this Hindu Code may well be styled as Islamic Code rather than a Hindu Code.

Shri A. Karunakara Menon (Madras: General): That is the reason why our friend Mr. Naziruddin Ahmad is opposing it.

Pandit Mukut Bihari Lal Bhargava : Of course this remark cannot apply to me. I feel as keenly as the learned member on it. Now Sir, the main question is about the Second Part of this piece of legislation under the head Marriage and Divorce. These are incorporated in clause 5 to 51. Let us see how far the type of marriage that is envisaged in these provisions of the Bill is akin to the Hindu conception of marriage. My respectful submission is that the show of a sacramental marriage provided in clause 7 of this Bill of an absolutely different character than what is the conception and ideal of Hindu marriage. It is only a camouflage to conceal the real type of marriage that is

envisaged. Otherwise the incorporation of the provision in clauses 10 and 21 would not have been there. To Hindus—and I think there cannot be any dispute on this point—there is no two opinion on the subject. Of course if we aim to dare Hindu ideals and ideologies, if we intend to say good-bye to them, then it is another matter. To a Hindu the marriage is sacramental and as such indissoluble. It is a religious bond of unity between the couple. It is not a union for such purposes which may be brought to an end at any time. It is not a contractual relationship. It is a relationship that has got some spirituality about it. By no stretch of imagination can it be brought to an end by the sweet whim and caprice of any of the parties. That is the conception of Hindu marriage. I would challenge any *smriti* or citation of any scripture, so far as Hindu scripture is concerned, which would negative this idea of sacramental marriage and will propound any other sort of marriage that is understood by *smritis*. Therefore my submission is that so far as the provision about civil marriage in this Chapter on Marriage and Divorce as incorporated in clause 10 is concerned it is absolutely foreign to Hindu law and should not find a place therein. Civil marriage has been in vogue in this country ever since 1872 when Act III of 1872 came into force. It was further amended in the year 1929. Civil marriage as envisaged by that piece of legislation must continue. But it should not find any place whatsoever in the Hindu Code. I want to ask why should civil marriage find a place in the Hindu Code. Is it in consonance with any *smriti* ? I ask this question because you claim that there is nothing revolutionary, nothing radical in this measure, and that in fact everything is just in accordance with Hindu conception, ideology and ideals. It is a preposterous claim which I must refute. My submission is that the incorporation of a provision like clause 10 in this Bill, which envisages marriage of a civil type, is absolutely unknown and foreign to Hindu ideals. Previously I have asserted that this form of sacramental marriage is only a comouflage for the other type of marriage and it is quite obvious if a reference is made to the provisions of clauses 7, 10 and 21.

So far as clause 7 is concerned it lays the conditions for sacramental marriage. Here I respectfully invite the attention of the House to clause 6. This says that it will not be open to the parties to contract any marriage if they happen to be *sapindas.* If we proceed to clause 10 which lays down the requisite conditions of a valid civil marriage it omits the provision contained in sub-clause 6 of clause 7 therefrom and restricts it to the other five sub-clauses of clause 7. Thereby a

marriage between *sapindas* is perfectly valid if it happens to be a civil marriage under clause 10. This is the difference or gap between the validity of the sacramental marriage and the validity of the civil marriage. What does clause 21 lay down ? It says that it is open to the parties who have entered into a sacramental marriage of the type envisaged in clause 7 later on go to the Registrar and ask him to register it as a civil marriage and the poor Registrar will have no option. What is the legal effect of these three provisions read together ? Whatever sanctity is attached to the sacramental marriage is eliminated. Mind you, one of the requisite conditions of a valid sacramental marriage is that there should be no marriage between *sapindas*. This condition does not exist in section 10 and the poor Registrar, inspite of the fact that the sacramental marriage was an invalid marriage because of this, has to register it as a civil marriage. Therefore, the camouflage, the curtain of a sacramental marriage is lifted here and the effect of invalidity, because it was a marriage between *sapindas* is circumvented by this device. I ask, is it in accordance with Hindu ideals of marriage ? Will not all persons be inclined, wherever they choose, to celebrate a marriage between *sapindas* ? They can do it as a sacramental marriage and subsequently go and cure the invalidity by undergoing civil marriage.

We come then to provisions of Section 9. It has been stated that even the sacramental marriage must be entered into a marriage certificate register and that if it is not so entered the defaulter may be punished under the law. As regards its validity, it is very doubtful whether it will be valid or not. Of course, the Rau Bill did not go so far. The Rau Bill left it at the option of the parties to either get an entry made in the register or not. The only object with which such a provision was incorporated in the Rau Bill was to facilitate the proof of marriage. But that object has been told good-bye in the present Bill. What is stated here is that it will be open to any Provincial Government to make the registration of sacramental marriages compulsory. The provision of section 6 says that a marriage in order to be valid, must be in accordance with the provisions of the Bill. If not, then it is not a valid marriage. Therefore, the conclusion is irresistible from the reading of Sections 6,7,10 and 21 that any marriage which has not been registered by the married couple in the certificate register will be invalid. I respectfully submit, what are the legal consequences flowing from this sort of a provision ? Are they not repulsive to the very ideal of Hindu society, to the very injunctions

of the *shastras* which lay down that a marriage solemnly entered into is an indissoluble tie and cannot be brought to an end ? Here if the married couple was foolish enough not to get an entry made to that effect in the register, their marriage will be invalid.

Coming to the next important provision in this Bill, that is, the provision regarding divorce. The question arises about past practice and we were quoted the *smritis* of Narad and Parasar by the Honourable the Law Minister to prove that divorce did exist in the Hindu society. I respectfully submit what has been pointed out by Mr. Dwarka Nath Mitter, the dissenting Member of the Rau Committee, before whom these very scriptures were put forward; he has interpreted them not merely on his own knoweldge of Sanskrit but upon the knowledge of learned pandits. He says that the only and the reasonable interpretation and construction of Narad and Parasar is that there can be a breaking of relationship only upto the betrothal stage, not after the actual marriage had taken place. Therefore, it is no use relying upon the *smritis* to establish the practice of divorce.

One of the arguments advanced by the Honourable the Law Minister, and repeated by Pandit Thakur Das Bhargava, was that divorce already exists in 90 per cent of the Hindu society. Accordingly to Pandit Thakur Das Bhargava, not only in 90 per cent of the Hindu society but even in 95 per cent it exists. I would respectfully ask, if what you say is a fact, where is the necessity of enacting any piece of legislation on divorce ? You are expected to legislate for the majority and not for a hopeless minority. The divorce of the form you have introduced in this piece of legislation will make the life miserable of the 90 or 95 per cent of the Hindu society amongst whom you say divorce already prevails, because according to the provisions of the present Bill it will be incumbent upon each party to the marriage, before it can resort to divorce, to go for the dissolution of marriage before a competent Court of Law. As has been pointed out by one of the gentlemen who wrote a dissenting note to this Select Committee Resort in most of the parts of the country among the agriculturists divorce is resorted to in a very simple manner by the execution of a deed of relinquishment or in any other manner, before the *panchayat* of the village. You must take into consideration the effect your legislation will have upon the agriculturists who form 90 per cent of your population. What will be the effect if clause 34 is brought on the Statute Book? Every couple, every Member, every party to the marriage will be compelled to knock

at the door of the Court of Law, to go to the district court and also in appeal and till that takes place no divorce can come into effect. I submit this will not be to the advantage but to the great disadvantage of the overwhelming majority of people amongst whom you say the custom of divorce prevails. Therefore, by enacting provisions of this type you are not helping the hopeless minority of 5 per cent but you are putting to disadvantage the majority of 90 per cent. Therefore, until and unless your provisions undergo a drastic change and amendment they should not and ought not to be brought on the Statute Book. I now come to the question of adoption. Here also the learned author and the draftsmen of this Bill have ignored the fundamental conception underlying adoption in Hindu law. As far as my meagre knowledge goes, adoption is not recognised by any other law. In Muslim law it was in vogue by custom, but even that has been brought to an end by legislation. According to Hindu conception, the life of a Hindu is so inter-mixed and inter-mingled with his religious conceptions and religion that it is impossible to separate the two.

Shri H. V. Kamath : Is the Honourable Minister for Law resting or meditating?

The Honourable Dr. B. R. Ambedkar: I am hearing the honourable Member.

Pandit Mukut Bihari Lal Bhargava: I was submitting that adoption in Hindu law rests upon religious belief which says that it is essential for the salvation of the soul of a departed man that he should have a son who may be able to give him oblations so as to make him attain *moksha*. So if you are going to legislate about adoption, you must keep in mind the underlying conception. Otherwise, you eliminate it. If you keep it, you keep the spirit underlying the doctrine of adoption. (*An Honourable Member:* What is the spirit?') What are the criteria you have fixed in this Bill for *validity* of adoption? While the Hindu law says that the eldest and the only son cannot be taken in adoption, instead of retaining that very salient principle, you want to reverse it and say that even the eldest and the only son can be adopted. (*An Honourable Member*: 'It is unfair.')

Babu Ramnarayan Singh : It is due to ignorance.

Pandit Mukut Bihari Lal Bhargava : It cuts at the very root of the conception of adoption, because according to Hindu law there must be the eldest or the only son to attend to the oblations for the departed natural father.

Similarly, what are the qualifications you have laid down in this Bill for a boy to be taken in adoption ? The three conditions laid down are that his age must be below 15, he must not be married and he must be a Hindus. I would respectfully submit that by putting a provision like this, you are putting the Hindus in great trouble, because according to the well known conception and custom of Hindu society relating to adoption marriage is not a disqualification, nor is age a disqualification. Why, I ask, are you imposing these limitations ? Has your experience of the administration of law in the past convinced you that these restrictions are necessary ? As far as my meagre knowledge of law goes, there has been no case where any difficulty has arisen. In fact, law by custom has recognised the validity of the adoption of a married boy. Similarly, whatever his age may be, the adoption is valid. What are the difficulties experienced that make the change in the existing law necessary ? It cannot be disputed that when you attempt any change you must have cogent reasons; otherwise, you must recognise the existing law.

Then, about the effect of adoption. You have given a good-bye to every well-established custom of Hindu law. The Rau Bill proposed that the effect of adoption would be to digest ownership of property vested within three years of the adoption. The present Bill goes further and it says that as soon as adoption takes place, there will be no, question of divesting of property. From that date half will go to the widow or the man and the other half to the boy. My respectful submission : why do you want to bring in a novel doctrine of adoption ? Where is the reason for it ? Has any difficulty arisen in the past ?

Then the question of disruption of the joint Hindu family. To me it appears that a most vital and fundamental change is sought to be brought about. Why should the time-honoured institution of Joint Hindu family be an eye-sore to you ? It has been said that the joint Hindu family as it was originally conceived has been shorn of its true characteristics by a galaxy of case law. I admit. But if the institution of joint Hindu family is an institution worthy of respect then your duty is not to bring it to an end because it has been dilapidated in the days of foreign rule, but to legislate for removing the difficulties and defects that have cropped up in the joint Hindu family institution and restore it to its previous position. We should have restored it to its previous vigour. That has not been done. I have not heard a word from the Honourable the Law Minister pointing out any fatal defects

that existed in the joint family system. His only point is that true characteristics have been shown off by case-law and therefore, the institution should be put an end to. I say it is a counsel of despair. That is a view which, at least I for myself cannot support. To me this joint family institution is an institution of which any nation in the world can well be proud of. It is an institution, Sir, which anticipated the socialistic and communistic form of society, centuries before our time. It is an institution, Sir, where even the invalid and the disabled members of the family have equal right to the corpus of the family. It is an institution which .....

Sirjut Kuladhar Chaliha (Assam : General): It is not prevalent in Bengal.

Pandit Mukut Bihari Lal Bhargava : Bengal, as far as my meagre knowledge goes is partly governed by *Mitakshara* and partly by the *Dayabhaga* system.

An Honourable Member: No, all by Dayabhaga system.

Pandit Mukut Bihari Lal Bhargava : Therefore, Sir, my point was that the axe of legislation should not have been applied by the learned Law Minister to cut at the very root of the joint family tree, if it does not rest on such firm and solid foundations as it did at the time of our ancients. Legislation should have been undertaken to protect it. In the time of the British, because we were subjected to foreign rule, and they were not at all interested in keeping in tact our time-honoured institutions. In fact, they had contempt for them. When our own national government has come into power, is it too much to expect that they should attempt to revive and restore this time-honoured institution to its previous glory rather than destroy it. I submit, Sir, by this Bill, the Hindu joint family is being shattered to pieces. What the Rau Committee proposed was not so fraught with danger as what is proposed in the provisions of this Bill. I invite attention to clauses 86 and 87 of the present Bill. The Rau Committee in clauses 1 and 2 of Part III-A only laid down that on the demise of a coparcenar in the family, the right in the property will not devolve by survivorship but will be by succession. That is intended to keep intact the coparcenary for at least one generation. Even that was not tolerated or liked by the present Select Committee and some of its members, including the Law Minister, with the result that what sections 86 and

87 lay down is that there will be automatic disruption of every joint family existing in India, simultaneous with the enforcement of this Act.

Shri L. Krishnaswami Bharathi; There is difference between joint family and joint property.

Pandit Mukut Bihari Lal Bhargava: I am coming to that.

Pandit Lakshmi Kanta Maitra : They are trying to put you off the rails. You go on, please.

Pandit Mukut Bihari Lal Bhargava : The Bill provides in clauses 86 and 87 that no court of law will take cognizance of any claim on the basis of birth. On the day this Bill comes into force, and further, that every joint family will be deemed to have disrupted so that joint tenancy would be converted into tenancy in common, simultaneous with this legislation. But I ask, why do you want this? Is there any uncertainty in the law to-day, in the existing Hindu Joint Family Law ? I respectfully submit there is none. Everybody knows what is meant by coparcenary and what are the incidents of coparcenary property. Why do you want it to be partitioned? My respectful submission is that this is against what was provided even by the Rau Committee. And public opinion, scanty as it was, was taken not upon the Bill as it exists today, but upon the Bill as was drafted by the Rau Committee. Therefore there is absolutely no information why a point of such vital change in the structure of the Bill has been brought about.

Now, what are the advantages of a joint Hindu family? What are the advantages of having coparcenary property ? I submit that.....

Shri B. N. Munavalli (Bombay State): Are there no disadvantages ?

Pandit Mukut Bihari Lal Bhargava: Of course, there are disadvantages, if everybody wants to go on living in a selfish way, entirely for oneself, without any regard to their relatives. But if you look at society in the way in which the *Smritis* wanted us to, we should renounce something for others also, for the other members also, to sacrifice something to make the family, a joint family then there is no disadvantage. There is every advantage and no disadvantage. My submission is that it cannot possibly be accepted by every Hindu family.

One of my friends here reminded me that Mitakshara is not governing Bengal and Assam. But Sir, you must keep the whole country before you and .....

Pandit Lakshmi Kanta Maitra: The joint family is also there.

Pandit Mukut Bihari Lal Bhargava: You are dealing with a population of 300 millions—of 30 crores—and a population that is extending from Kashmir to Cape Comorin, a population that extends from Gujarat to the farthest end of the country. And you want to disrupt the status of the joint family system, and that will affect overwhelmingly vast population. Therefore, you must think thrice before doing such a thing as will disrupt such a vast population. In this legislation you want to disrupt the family. If it is decrepit, if it is dilapidated, if it is, as one of the Members said, in such a condition that we need not even shed tears about it, let it die a natural death. Why should you apply the axe of destruction and bring about its end ?

Then Sir, I proceed to the question of inheritance. Now, here I have got the greatest grievance. As my friend Mr. Naziruddin Ahmad said, the Rau Committee Bill was substituted by a departmental committee Bill and in this departmental Bill innovations were introduced. Clause 94 lays down that property will be excluded from the rules of succession laid down in this Bill. It is in the original Rau Bill it was that every piece of Agricultural property will not be governed by the rules of Succession laid down there, because under the Government of India Act it is not within the purview and jurisdiction of the Central Government. The Rau Bill did not say that there will be any exception in the case of the Centrally Administrated Areas, which are under the direct control and supervision of the Government of India

Now, Sir, in the departmental Bill the words “in the Governors provinces” were introduced with the result that every agriculturist in my province of Ajmer-Merwara as also in the provinces of Delhi and Coorg, which are the Centrally Administrated areas and even the agricultural property situated in these provinces will be governed by the rules of succession laid down here. Look at the anomaly that is sought to be perpetrated by this piece of legislation. The law that will govern the bulk of property will be absolutely different in the Governors Provinces, while it will be just the contrary in the Centrally Administrated areas. Is it the uniformity which is aimed at by this unique piece of legilsation ? Whether this will be in consonance with the ideal of uniformity or it is the opposite of it. May I respectfully ask ? My submission is that all the rules of Succession that you have laid down in the provisions of the Bill if they are applied to the

agricultural property in my province—and I can speak with some knowledge of my own province and the people inhabiting my province- I submit the law will be obeyed more in infringement than otherwise, because the rules of succession that you have laid down are so contrary to the established usage and custom of the people, that they will not accept them as a rule governing them, even at the risk of their lives. What are the rules of succession that you have incorporated in this Part VII, Chapter 2 and Schedule VII? Are they in accordance with the accepted principles of Hindu law either as propounded by *Mitakshara* or by *Dayabhaga* and where is the indication of it ? What is the basis you have taken for inheritance? You say it is 'natural love and affection'. So far as propinguity and consanguinity is concerned in the case of inheritance, one of the fundamental principles of Hindu Law is violated. One of the fundamental principles of succession in the Hindu law is that it depends upon the capacity and the liability of the descendants to offer *shraddhas* to their parents. This is the fundamental capacity which has to be taken into any law of inheritance. Of course, the view was that we are not going to care for Hindu Law; that is a different matter; then delete the word 'Hindu' from there, I have no objection, but if you are to incorporate the fundamentals of Hindu Law, the first thing that you have to take into consideration in the principles of inheritance, is the capacity and the liability of the descendants to offer *shraddhas* to their ancestors, and this is the basis of the *Dayabhaga*.

The Honourable Dr. B. R. Ambedkar: All of them can offer *shraddha* for you and get the property.

Pandit Mukut Bihari Lal Bhargava : What is the reason for the promulgation of this novel Rule of succession ? Brother and brother's son has been relegated to a very, very inferior position. Brother and brother's son comes after daughter's daughter, daughter's son, son's daughter. Is it in accordance with the accepted principles of Hindu Law ? Is it likely to bring peace to the family ? (Many voices : 'No, no.'). Will it not disrupt the family ? Will it not create perpetual disturbance, discord in the members of the family ? This is inconceivable. According to the Hindu society even today, though it has been the subject of outrage for centuries, even today there is love and affection between brother and brother. When I make certain observations, I keep the agricultural population in view. You go to any village and you will find that 9 out of the 10 families live jointly.

The brother is living with brother. He is not separate and as soon as you give the right of inheritance to daughter's daughter, to daughter's son in preference to the brother or the brother's son my respectful submission is that the society will not tolerate or even if it tolerates, the peace and quiet that exists today will disappear in no time. Therefore, you have to be very wise before laying any novel rules of succession so contrary, so repugnant to the accepted principles of Hindu law.

Now, I come, Sir to the doctrine of bringing daughter in the category of simultaneous heir with son.

The Honourable Dr. B. R. Ambedkar : I thought he had said something about it. No elaboration is needed.

Pandit Mukut Bihari Lal Bhargava : Now, Sir, it has been argued that the daughter had a specific share in the inheritance of her father according to the scriptures and the reliance is placed upon Manu and Yajnavalkya, but my cursory knowledge of these Hindu law texts is that whatever share is allotted is in the case of an unmarried daughter and we have no objection at all, even today to allot any share to an unmarried daughter. The question arises even today, what is the position? Can anybody deny that ? Not one daughter among thousands remains unmarried. The daughter is given, according to the status of the family, the best education and is treated on the same footing as the sons. When her marriage takes place she is given a dowry according to the status of the family. On marriage her relationship to the brothers is not cut off. As far as my experience goes, she is invited for every function in the family and on occasions of marriage in her parent's family a quota is assigned to her according to custom. Can anyone say that resort to a court of law will bring peace and franquillity in the home? Such a step will only aggravate the situation and the provisions in the Bill for resort to court are there to our utter shame. We do not want that our daughters and sisters should go to a court of law. It was never contemplated by our sages that they should seek the help of the law. The position assigned to our daughters in the family is of such a unique character that it is difficult to find a parallel to it anywhere. Even after marriage, as I was saying, the daughter has a definite share in the family budget for festive occasions. The question was asked, whether she can go to a court of law to enforce her rights ? Sir, if in a family the father or the brother of a girl is unmindful of his duties to her, he is looked down upon by the

community. According to the well-established custom, every daughter of a family must be present at the time of her brother's marriage. I may tell honourable Members that there is particular ceremony which must be performed by the sister and her husband before the bride and the bridgroom can enter the house. These are time-honoured customs. We give the daughters a definite position. What will you gain by giving her a share in the family property ? One of the justifications for this reform is that there must be absolute equality between a son and a daughter. May I know is there any equality in fact ? Is it not a sham equality that you are going to assign to the daughter ? The conditions are absolutely different. The daughter has to go in due course to a different family. The son has not to go. These are the conditions inherent in the situation. Therefore, whatever law you make must be suited to the conditions and not in violation of them. If you make a law in violation of these conditions, the society will go to pieces.

Now, what is the percentage of property owners in Hindu society today ? It is a very relevant question because, according to the existing custom not only the father has the moral obligation to arrange for the marriage of his daughter, but even the brother, whether he inherits any property or not, thinks it his moral duty to arrange for the marriage of his sister in the absence of his father.

Shrimati G. Durgabai: Do you think he would not discharge his moral duty if he allows his sister a share ?

Pandit Mukut Bihari Lal Bhargava : The honourable Member is talking of a share while I am talking of a family without property. What will become of the sister in such a family ? You may go to any village or town. You will find cases where the father is dead and the unmarried sister is living with her brother. This brother thinks it his moral duty to arrange for the marriage of his sister and he even borrows money for this purpose. Unless and until he has discharged that sacred trust he never thinks of himself.

Mr. Deputy Speaker : Is the honourable Member likely to finish soon ?

Pandit Mukut Bihari Lal Bhargava: I require one hour more, Sir.

Mr. Deputy Speaker: Then the House stands adjourned.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday, the 4th April, 1949.

* HINDU CODE—*contd.*

Mr. Deputy Speaker: We will now proceed to the further consideration of the Bill to amend and codify certain branches of Hindu Law, as reported by the Select Committee. Shri Mukut Bihari Lal Bhargava will resume his speech.

Shri R. K. Sidhva (C. P. and Berar : General): Before we proceed to the further consideration of this Bill, we would like to know what is going to be the programme in regard to it. Will it go on indefinitely? I would request that by common consent some time-limit may be fixed on the speeches of members so that as many members as may be possible to be accommodated may participate in the discussion.

Mr. Deputy Speaker : I may inform the House that this is an official Bill and they have provided for two days. The Speaker has not concern with it.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Sir, I have to resume my unfinished speech on the Hindu Code. But before I do that, Sir, I have respectfully to draw your attention to the declaration that was made by the Hon. Prime Minister on the opening day of this momentous session.

Sir, the Hon. Prime Minister was pleased to characterise this measure as a piece of simple and essential legislation. I respectfully protect that the measure that is for consideration before the House is not a simple one. I may also be permitted to point out that some of the opposers of this Bill have been accused by the Hon. Prime Minister of adopting delaying tactics. Those are well conversant with this Assembly and the proceedings that have taken place here will readily recognise that this measure has not at all been sufficiently discussed this vital measure which affects the life and death, as I would say, of the Hindu society has been on the anvil of this legislature for only a very short time. If you refer to previous occasions when social legislation like the Sharda Act and the Hindu Women's Rights to Property Act was brought before this legislature, you would find what an amount of controversy they raised. Compared to those Bills, this Bill is enormously of great importance. It affects the entire structure of Hindu society. This Bill, Sir, if placed on the Statute Book—people may differ with me, the Hon. Prime Minister may differ from me,

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 464-91.

but I do feel so—will result in the utter extinction of the Hindu society, not in the sense that thirty million Hindus will cease to exist, but that the distinctive features and characteristics of the Hindu society will cease to continue.

This is not a simple measure. But the fact is that this Bill aims at the utter demolition of the entire structure and fabric of Hindu society. It aims at changing the law of marriage, the law divorce, the law of adoption, law relating to minority and guardianship, the Law of the Hindu joint family, the law of succession and everything that constitute and what remains of the features of Hindu society. The very foundations not only of one pillar but of all the pillars on which the Hindu society rests, are shaken. Therefore, Sir, it is but neat and proper that we as legislators, we who are the guardians of the interests of the people should discharge our duty to the best of our ability and see how far the measure that we are considering is wanted by public opinion in the country. To characterise this measure as a simple piece of legislation is, I respectfully submit, not fair.

My further submission is that if it is not proper to characterise it as a simple piece of legislation, it is still more unbefitting to characterise it as an essential measure. What is the need, I respectfully ask, for this measure ? What will happen if this Bill is deferred and not brought on the Statute Book till the new legislature, the sovereign Parliament to be elected in free India on adult franchise is elected ? Is there any malady from which the Hindu society is so vitally suffering that if a few months pass without this Bill being placed on the Statute Book, the whole society will crumble ? I submit that in no sense of the term is it essential. We can very well afford to wait for one or two years more. The Hindu society which had successfully stood the test of centuries, the clash of many civilisations, the clash of foreign aggression and had been subjected for centuries to political subjugation can very well survive without this piece of legislation for a year or two more.

Sir, if we wait for . . .

Shri S. Nagappa (Madras: General) : Sir, on a point of order. The hon. Member is casting aspersions on the House when he said that this house is not competent to deal with this matter and that we should wait till a new house is elected.

Mr. Deputy Speaker: There is no point of order in what Mr. Nagappa has said.

Pandit Mukut Bihari Lal Bhargava: Sir, in spite of the interruption of my hon. Friend, I must assert that this house as at present constituted, is thoroughly incompetent to deal with a measure of this vital nature. The question is . . .

Mr. Tajamul Husain (Bihar: Muslim): On a point of order, Sir. It has been decided by the Chair that this house is competent to deal with this Bill. After that ruling, can any hon. Member question whether this House is competent or not ?

Mr. Deputy Speaker : There is no harm. It is a ruling of the Speaker that this House is competent to deal with this Bill, and according to this, Bill is being pursued. If the hon. Member wants to raise other questions, or raise other reasons, other than legal technicalities, it is open to him to do so. But I would advise the hon. Member that this point has been raised by almost every one of the previous speakers and it has almost become state.

Pandit Mukut Bihari Lal Bhargava : Sir, it is only the interruption of my friend here that provoked me to make that remark, I do not question the constitutional power of the Legislature to pass this vital measure. But the question is one of propriety. Can you usurp the functions of a full-fledged legislature, can this House which was specially brought into existence for the particular purpose of drafting the Constitution of India, do that? Therefore, I submit apart from the constitutional aspect of the question, apart from the point of legal power of this Legislature, it is a question of propriety, and propriety is of immense importance. And I feel that I have the right to assert, in spite of the interruption of my learned friend and those with him, that this House must think thrice before dealing with a measure of this vital importance. And my submission is that this measure is not essential and this Government need not have a declaration of a nature to make this question an issue of confidence before the House. The question has to be dealt with a calm mind, and we have to take into consideration the devastating effect that this measure will have upon the entire structure and fabric of Hindu society.

Now, coming to my speech from the stage I left it, I was dealing with the question of innovation that has been introduced in this piece of legislation, namely, the bringing in of a daughter in the rank and file of simultaneous heir with the son. My respectful submission was and is, that this innovation is wholly uncalled for, and that this innovation will demolish the entire structure of Hindu society. Let

me ask, how this is possible. What is the real state of Hindu society ? The difference between man and woman, the difference between the son and daughter, this is inherent in the very situation. The son has to remain all through his life, from his inception to his death, with the family in which he has taken birth. The daughter has to go a stranger's family. What are the consequences resulting from this inherent situation ? The Hindu law givers, the persons who gave us the scriptures, were they so degraded, were they so opposed to the fair sex that they did it only with a view to inflict an inequality or an injustice ? I respectfully submit that this is a wrong reading of the entire scriptures and the Hindu Law. In fact, if the right of inheritance to the patrimony is given to the daughter, I shudder to think of the consequences. The Hon. Dr. Ambedkar, the Law Minister, in his speech remarked, if a Hindu has twelve sons and one daughter, and if on his death his property could be divided into twelve shares, what heaven will fall if instead of twelve it is divided into thirteen shares ? I respectfully ask the Hon. Law Minister to take the opposite case, where a person has got one son and twelve daughters. What will happen in that case ?

The Honourable Shri Jagjivan Ram (Minister of Labour): Thirteen shares.

Pandit Mukut Bihari Lal Bhargava : Is a family house to be divided into thirteen shares ? Sir, think of rural India, do not think of urban India, with people living in palaces, but think of rural India where a family has got a very small house. If on the death of the father, his house is divided into thirteen portions, and the twelve sons-in-law are to be accommodated in that house, what will happen ? And Sir, under the law as it is proposed to be made, it is open to the daughter to marry any person she likes, even if she takes courage to enter into marital contract with a non-Hindu she has no bar, and that is not a disqualifaction for inheritance. What will be the result ? The result will be that every house, and every family will be reduced to a family of feuds in which there will be quarrels and worse still—murders too. Therefore, Sir, I respectfully submit that when you are making a law you are not to take into consideration only a concrete example of the character to which the attention of the House has been drawn by the Hon. Law Minister, but you have to take into consideration every imaginable case, and it is on that footing that you have to frame the law.

Why this inferiority complex about the status of the daughter in Hindu society ? I protest against its very implication. In fact, the daughter in Hindu society has got a very exalted and elevated position. Her marriage into a stranger's family does not cut of her connections with the natural family of the father. On every occasion, on occasions of births, deaths, marriages and other occasions she has to come and perform certain essential ceremonies, and on those occasions the Hindu family has to make presents to the daughter. The daughter's relations with her natural family continues all along. If she gives birth to a child, her brothers have to give her presents. Sir, I may further venture to assert that on the occasion of every marriage in the sister's family, the marriage of a male or female child, the brothers have to make presents. Presents are so essential on every occasion. That being so how can it be said, Sir, that the daughter does not get anything from the property ? My submission is that the whole mental outlook with which this question is approached is diagonally wrong, if you consider it from the criterion of Hindu civilisation and Hindu ideals and ideas. Of course, if your criterion is not indigenous, if it is not Hindu, not Indian, but anti-Indian and anti-Hindu then of course, you must take the opposite view.

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Now let us consider what is the result of giving a share to the daughter in the family patrimony. You can see the Muslim family. The inevitable result of giving this share in the patrimony would be that marriages between cousins will be absolutely common, and sooner or later marriages even within prohibited degrees will come into existence, whether you like it or not. This is what the inevitable consequence would be. If you trace the history of the daughter's share in patrimony, in so many countries, in Egypt, in Greece, in Rome or under Islamic law, you will come to the conclusion, and the only conclusion, that if a share is to be given, then, you must necessarily widen the scope of the right to contract a marriage with first cousins. So far as the Hindu point of view is concerned, that would be a calamity which no Hindu family can tolerate.

I now proceed to the other point. Do you think, that by providing in this piece of legislation that a daughter has an equal share with the son, you will be carrying out what you intend to do, that is to say, you will be conferring any rights to property on the daughter ? I respectfully submit, Sir, that it is not. On the other hand, you will be letting loose and creating scope for so many evils. Under the law

as it is incorporated in the Hindu Code, it will be open for any father to make a gift *inter vivos* in favour of any of his sons, or to dispose of the entire property by a testament. Is there any bar to this, I ask, If there is no bar, then, unless and until the society is prepared to give an equal share to the daughter, the only result of this legislation would be testamentary disposition or gift *inter vivos* of the entire property by the father to the sons. As a lawyer, I have some experience of courts; there are other friends here who have full experience of courts. Is it not a fact that in every ten cases of testament and codicil, nine cases go to the court and give rise to very prolonged litigation? Not only questions regarding the disposing capacity, but questions about the testator being a free agent in executing the will and codicil are raised; complicated questions about the construction and the interpretation of the different clauses of a complicated document like a testament are raised : not in one court, but right up to the highest court, the Privy Council. If that is the situation, may I ask how you will be able to safeguard the interests of the daughter. My respectful submission is that you will not be safeguarding the interests of the daughter by making this disastorus piece of law, but you will be doing her a positive harm which it will be difficult for you to undo. The very psychological approach of a Hindu family will change. As soon as it is provided in the law that a daughter has a share in the patrimony, the brother will think himself absolutely relieved of the duty of maintaining his sister and providing for the marriage expenses. What is the condition of the Hindu families today ? What is the percentage of the families that have got immovable properties ? My submission is, it cannot be more than forty per cent. What will become of the rest of the 60 per cent, of the families, I shudder to think. What will be the result in the case of these 60 per cent, of the families governed by the *Mitakshara* law., who have no property at all ? Because by law the sister is made equivalent to the brother, the brother who feels a burden and responsibility to bring up the sister up to the time of her marriage and conduct the marriage, to give her dowry, to give her everything, that sincere brother will feel relieved of his responsibility. That would be the result, and the only result, of this disastrous provision, without any corresponding benefit to the daughter. Therefore, my respectful submission is, not on the ground that the daughter is not equal to the son, nor because of any prejudice against the fair sex, but in the interests of the daughter herself, that this provision should not be enacted. Of course the daughter has got other means

to safeguard her interests. They can get valuable rights in the property of their husband, in the property of their father-in-law.

Shri L. Krishnaswami Bharathi (Madras: General) : We have already given that.

Pandit Mukut Bihari Lal Bhargava : If that is already given than, there is absolutely no necessity to give her a share in the patrimony. Even as I understand the law, a right of a limited character has been given; you can certainly widen that and give the daughter a right equal to that of her husband in her father-in-law's property. That is a very good suggestion which we can consider.

Now, Sir, I come to the other important change in this revolutionary piece of legislation : I mean the disruption of the joint family status. A very important feature is that under section 86 of this Bill, no court of law will hereafter be entitled to take cognisance of the right by birth. I shudder to think of the evil consequences flowing from this provision. It is said that Bengal, and Assam are already governed by the *Dayabhaga* system of law which does not recognise the joint family status, under which every family member occupies a position of equality. Does it mean that this system should be extended to the whole of India ? If five crores of people are governed by this system, and twenty crores by the other system, is there any justification of law for extending the law of the five crores to the other twenty crores ? I say this *is* absolutely wrong. My submission is that the right of acquisition by birth is a valuable right of a Hindu son. It is a right which provides against the prodigality and spend-thrift character of the father. It is this valuable right that has saved the properties of so many thousands of Hindu families. It is this right that is being done away with by this disastrous piece of legislation, in section 86. Not only this; section 87 provides that every joint family will have a compulsory disruption on the coming into effect of this unique piece of legislation. Why should there be a compulsory partition ? My submission is that these provisions are not of a simple character; they are of a revolutionary and radical character and there is absolutely no reason why changes of this enormous character should come into existence.

Then I come to the very important provision, incorporated in the Bill about what is known as dissolution of marriage. The clause that deals with this is clause 30. It lays down the grounds upon which dissolution can take place. The other clause relevant is clause 33 which

lays down the grounds upon which judicial separation can be claimed by a party to a marriage. Then, there are provisions for the declaration of a marriage as void or viodable. These are absolutely novel provisions so far the Hindu Law and Hindu society is concerned. In fact these provisions of law and the other provisions of law incorporated in this Bill have created a paradise for lawyers. For declaring a marriage void the matter can be taken to a court of law. For getting a marriage dissolved the parties can go to a court of law. For seeking a judicial separation they can go to a court of law. What are the lessons learnt from the cases of dissolution of marriage in so many European countries. It is indeed surprising and astounding that the experience of western countries and the experience of America and England where in every six marriages there is a case of one marriage dissolution, has not given any lesson to us. We have not had this position in our society at any stage of our society and why should we introduce compulsorily the resort to a court of law. Clause 34 provides that every dissolution of marriage can only be through the medium of District Courts and it also provides that every case of dissolution must automatically go to High Court for confirmation under clause 44. I ask whether it is not opening a door for lawyers to prosper. Should any piece of legislation set the ball rolling for more litigation in the society ? My submission, therefore, is that the provisions for judicial separation and for dissolution of marriage as incorporated in clauses 30 and 33 are not only opposed to accepted ideals of Hindu Society, they are diagonally opposed to our civilization and culture. They are directly contradictory to the sacramental marriage because it is not a contractual relationship that can be brought to an end by the whim and caprice of any of the parties but it is sacred bond of union which has its root in the past and which will have its effect in the future. That is the conception of Hindu marriage. These provisions of judicial separation or dissolution of marriage are diagonally opposed to what is our conception of marriage and still when the western countries which have been habituated to this sort of marriage relations—divorce and everything—when they are feeling tired of it, when the sanest of their thinkers are thinking of this system as ruinous to society, it is indeed a wonder that we are trying to imitate it. My submission therefore is that you should be very careful., What are the grounds of judicial separation ? A case of adultery. The law says that the marital relations can be brought to an end by judicial separation or by dissolution of marriage. The germs are there before the couple and I would respectfully draw the attention of the House whether it is not

a fact that if there is a quarrel—naturally there is bound to be quarrel in families so many times—if these provisions exist in the bill, they will give an incentive to the couple at any time of quarrel or even family scuffle to seek the remedy of the court and Sir, it is very cheap because the charge of adultery can be brought by a woman against her husband or a husband against a woman very easily and there are interested persons everywhere to disrupt the families. Result would be for very flimsy reasons there will be cases of divorce. It therefore will be ruinous to Hindu society. Our society has survived the onslaught of so many centuries and has successfully stood in the world as the ideal form of institution notwithstanding the onslaughts because of the inherent system of *pativratabhakti.* These provisions do not even help those communities which are by custom taking resort to divorce. They create a great obstacle and compel them to go to court. It is opposed to our culture and civilization and our accepted ideals of ideal marriage life. One argument has been repeated often *viz.*, there is nothing radical or revolutionary about this measure, and the provisions regarding marriage and divorce are of a permissive and enabling character. If that is so, why not scrap all these provisions from clause 5 to 51 and make one clause in the Bill that every Hindu shall be competent to marry any person he likes because that will be only an enabling provision. He can very well, at his own risk, marry his own sister. Therefore it is no use providing such a comprehensive bill with so many sections. Why not scrap them and provide one general section and it will be a model of simplicity as also a model of the civilization and the stage through which we are passing. My submission therefore is these provisions from a Hindu oriental point of view are simply repulsive and could not be incorporated and cannot be tolerated in a bill of this nature.

I come to the next point. Under the provisions of this bill, clause 91 is the relevant clause—every property that comes to a female either by inheritance from father or from father-in-law or from any other source will be her absolute property and the rules of devolution of female property are provided in clauses 106 to 109. These provisions are also not conducive to the attainment of peace in family life, and are of a disastrous character. Here again every provision is opposed to the accepted conception of Hindu ideal and you will find that the property which a female inherits and which according to clause 91 will be the absolute property of the female will descend in the order also prescribed under clauses 106 to 109. That is, the first persons

to inherit will be the husband and children equally. If there is no husband or children, then who are the persons under the Bill who will be entitled to inherit the property. There are mother, father and husband's relations. May I ask humbly and respectfully every honourable Member of this house whether there is any father or mother in this land of Hindus who will relish property from his or her daughter?

Shri L. Krishnaswami Bharathi: Why not ? What is the harm ?

Pandit Mukut Bihari Lal Bhargava : Perhaps my honourable friend comes not from India but from an outside country.

Shri L. Krishnaswami Bharathi: I come from South of India.

Pandit Mukut Bihari Lal Bhargava : In India no father or mother will ever think of receiving anything from the daughter.

Shri L. Krishnaswami Bharathii: That may be so in the Punjab.

Pandit Mukut Bihari Lal Bhargava : It is so in the whole of Northern India. I cannot speak with authority about South India. But so far as Northern India is concerned the very idea is repulsive. Of course there is an exception to this rule among those who count money and property over every thing else. To them *dharma* is no matter of their concern. But I am not talking of those exceptions : I am talking of the ordinary father or mother in Northern India. Their souls will revolt at the thought of accepting anything from their daughter. In *kanya dan* when a father and mother sitting together give their daughter to the bridegroom as also dowry and ornaments, after that in our part of the country, the mother or father will not even take water in the house of the daughter.

Shri L. Krishnaswami Bharathi: It is not so bad in our part of the country.

Pandit Mukut Bihari Lal Bhargava: That might be a custom or usage prevalent in your part of the country but in my part of the country, an overwhelming majority will be opposed to the idea. They cannot even imagine receiving any inheritance from the daughter. Therefore the entire fabric of the rules of devolution is based on anti-Hindu ideals. If Mr. Bharathi takes the trouble to go into the rural parts in my part of the country he will be surprised to find, let alone the father or mother, even the inhabitants of a village will not drink water in another village into which the daughter of their village is married.

Shri L. Krishnaswami Bharathi: I am told that they do not even pass through such a village.

Pandit Mukut Bihari Lal Bhargava: Under the rules of devolution after the father and mother who are the persons entitled to inherit the property of the female ? If it provides that that will go to the husband's relations, it is repulsive and it will create family feuds. Why should property go to the husband's relations, if it has come to the daughter from the father ? That is why our law-givers have made several categories of *stridhana* which will accrue to different categories of people. You are not competent to understand the higher motives of our law-givers who made those salient provisions and you want to sacrifice their ideals at the alter of simplicity. According to our accepted notions of *stridhan,* if the property has come from the side of the father it is the father's relations that are entitled to it. Why should not a provision of this character be incorporated in sections 106 to 109. That would be more acceptable to Hindu ideology .

I now come to the other provisions of the Bill. On the day the Code comes into force, the joint tenancy will be deemed to have been converted into tenancy-in-common. The Bill makes a provision in clause 115 that it is open to every heir to go to a court of law and claim partition of the family property. Is this provision conducive to the preservation and maintenance of peace in the family ? After the death of the father, the daughter, the son, the widow of a pre-deceased son, etc., will rush to a court of law and claim partition as required by section 115. This will be like the Islamic law, entirely repugnant to Hindu ideology and cannot be tolerated in a Bill of this kind.

It is claimed that this Code will resolve conflicts of opinion, that it is an exhaustive piece of legislation providing remedy for every malady in Hindu *dharma.* Are there not any omissions in the Bill and until they are filled in, will it not shatter the Hindu society ?

Under clauses 88 and 89, you abrogate the doctrine of Pious Obligation. Under clause 89 you provide that the family members will be entitled to pay the duties existing on the joint family. What provision have you made when the father dies ? Who is to bear the funeral expenses or make provision for *shradhas,* or the other charitable objects connected with such occasions. Once this Code is brought on the Statute Book will there not be fight and feud between the different heirs ? On the death of a father every son and daughter will be so absorbed in assimilating the wealth of the father that they will forget their duty to

perform the *shradhas,* which are essential for any self-respecting family. There is absolutely no provision in this regard in this Bill.

Does the Code provide for the Hindu joint family ? In Hindu Law there is a distinction between co-parcenary property and joint family property. What is the number of families in India carrying on business? Is there any provision within the four corners of the Bill for that ? How will succession take place in joint family business ?

You claim exhaustiveness for this Code. Have you made any provision for an adopted son? Under clauses 52 to 54 every Hindu male on attaining the age of 18 is entitled to adopt a son with the consent of his wife. After adoption if the father gets his own son what will be the son's rights in the patrimony ? Does your Code present any solution of this problem ? Our Hindu law-givers or *smritikaras* make ample provision for different parts of the country. What is the position of a son born after adoption of a son by the father ?

In *Dayabhaga* he gets one-half: under *Mitakshara* he gets one-third; in the Bombay Presidency he gets one-fourth. Have you made any provision here ? If not, will it not create confusion and confusion of a worse character ? Have you made provision for partition of the joint family property and so many other things which are an essential, and complicated, branch of Hindu Law ? My respectful submission therefore is that this will create problems and questions which it will be very difficult to answer.

Then the question arises what will be the rights and duties of a son who has no share in the joint family property. Under the present circumstances, a son by birth has got rights in the property and that is a shield behind which he can stand for his maintenance, education and other things. You may point out to me the provisions of clauses 126 and 128 of your Bill which lay down that it will be the duty of every husband to maintain his wife, and the wife may claim separate maintenance from him on certain grounds as those of illness like leprosy etc. There again is the door for litigation and a paradise for lawyers. And in clause 128, you will say, you have provided for the maintenance of children and aged parents. But by providing for maintenance under clauses 126 and 128, are you effectively safeguarding their rights ? My submission is you are not. You are placing them in a worse position than what they occupy under the present Hindu Law. Under the present Hindu Law a son has an inherent right to maintenance out of the family property, and if the father or manager or *karta* of

the family is so undutiful as not to look to his interests he has his remedy in a court of law. He can even claim partition. Every student of Hindu Law knows that while a minor has very restricted rights to claim partition in Hindu Law, if the father or the manager or *karta* of the family abuses his power to the detriment and prejudice of the minor, he has the legal remedy open to him and he can proceed in a court of law to enforce his right to partition. That is a valuable right and you are taking away that valuable right.

Similarly you say that in clause 126 you have provided for the maintenance of the wife and in clause 128 you have provided for the maintenance of children and aged parents. If a husband happens to be penniless, if he cannot earn, if he has got nothing to support himself, how can he support his wife ? Therefore I submit that this pseudo right conceded to the wife is only a sham and a paper right. In the present Hindu Law every wife, every female has a valuable right of residence and of maintenance and she can enforce the right through a court of law if the manager or the *karta* abuses the right.

Shri L. Krishnaswami Bharathi: Even if her husband is penniless ?

Pandit Mukut Bihari Lal Bhargava : I am talking of joint family property. The matter will be different if you decide by a piece of legislation that every piece of property is to disappear and there should be socialisation and nationalisation of every property. But, keeping intact the institution of joint family you are depriving the minors, the widows and the females of their valuable rights which exist under the present Hindu law. In the name of equality which is sham and paper equality you are perpetrating a wrong which it will be very difficult to remedy. My submission therefore is that judging from every point of view this piece of legislation is not only opposed to the accepted principles of Hindu Law but is liable to create such confussion in Hindu Society which it will be very difficult to overcome or remedy.

Sir, before I conclude I have to sum up what I stated on the 2nd of April and now. I said that there is absolutely no necessity and no desirability of the codification of Hindu Law. It is neither necessary nor desirable. It is not wanted by judicial opinion in the country. There is no conflict of authority of such a series character as to warrant the interference of a Legislature. There is no public demand for a measure of this character. The *quntum* of evidence upon which the Rau Committee relied was analysed by me in my speech on the 2nd

of April and I pointed out that the overwhelming weight of opinion in the evidence recorded by the Rao Committee was opposed to every innovation and change that is incorporated in the Rao Committee Bill which has been further aggravated in the present Hindu Code Bill as it has emerged out of the Select Committee. On every point, on the question of divorce, on the question of sacramental *cum* civil marriage, making sacramental marriage liable to be converted into civil marriage at one's sweet will under clause 21, there was opposition, and opposition from every quarter. From every quarter the overwhelming weight of opinion was against the ending of the joint family status. Therefore, on every crucial point, the overhelming opinion was against the Rao Committee Bill. Even now in the opinions that are pouring in from the various quarters in the country, from judicial quarters, from bar associations, from other citizens, there is a unanimity of opinion that a measure of this subversive type is not at all required under the present circumstances. Therefore I had submitted, and I repeat it today, that codification of the Hindu Law is neither desirable nor necessary.

I have pointed out that the marriage provisions contained in the Bill are a misnomer for marriage. It is in fact introducing the principles of Islamic and Christian marriages into the Hindu Code under the garb of sacramental marriage. It will be a sham. It will be shameful for any Hindu to go into a marriage of this character which is liable to be changed at one's sweet will into a civil marriage. This cannot be tolerated.

Shri S. Nagappa : This Bill does not prevent sacramental marriages.

Pandit Mukut Bihari Lal Bhargava : I have already met your argument, an argument that is often repeated on the floor of this House and outside, that this is an enabling measure, a permissive measure. If that is so, scrap off everything and have one omnibus clause in the Bill that everybody is competent to marry anybody. That will meet the requirements. Why do you make a fetish of the sacramental marriage ? The sacramental marriage of the character you have provided in the Bill is nothing but a mockery, an insult to the time-honoured institution of sacramental marriage. It is only a misnomer to deceive the people, to convince them that there is no departure from the eastablished practice. It is a hoax that is sought to be perpetrated on the Hindu society. No self-respecting Hindu can possibly tolerate this state of affairs.

Better do away with these provisions commencing from clause 5 to 52. They are wholly opposed to Hindu ideology, to Hindu culture and to Hindu civilization. That is my submission in respect of the marriage provisions. As regards the divorce clauses I had already made my submission. About adoption, I had said and I repeat it today that the very conception of adoption is a creation of Hindu law, and if you cannot in this modern age, on account of what you call your advanced views, subscribe to that ideal of adoption, then do away with adoption altogether but don't provide for a hotch-potch adoption of the nature you have done. According to the provisions of the Bill, every person, every Hindu, can be adopted as a son. There is no restriction of *Gotra,* there is no restriction of caste, there is no restriction of the status, and it is left to the person concerned to adopt any person. Those, who are well conversant with the codes of Hindu law, very well know how the adoption of a stranger in the family has been the source of litigation. There are well-established, customs and usages having behind them the sanctity and authority of judicial pronouncements whereby only a member of a family of the same *Gotra* can be adopted. All those usages, all those well-established customs are very easily given the go-by; without even thinking of the disastrous consequences this step is being taken. I shudder to think of the very terrible consequences that are bound to follow from a provision of this character. Better do away with the institution of adoption altogether rather than provide for adoption of this kind. In fact, I may be permitted to remark—and I do so with full responsibility—that the sponsors of this Bill had an inherent abhorrence, an inherent hatred against everything related to Hindu culture, and that is why we find provisions of this character being included without appreciating or finding out what were the motives of the Hindu law-givers in providing for adoption. The sole purpose of adoption under the Hindu Law is that a person may have a son to administer to his spiritual needs, to offer oblations on his death. That is the sole purpose of the conception of adoption but by making a provision that any Tom, Dick and Harry can be adopted you are cutting at the very root of that conception. Do not therefore, make such a provision. Better do away with adoption. It doesn't exist in so many societies. Where is the necessity to perpetuate it if you are so averse to it ? But then do not make a mockery of the conception of adoption.

Sir, I shall submit that every provision in this Bill has got a stigma which is anti-Hindu and therefore cannot be acceptable to any Hindu. To me this Bill is an insidious effort on the part of its sponsors to

take the Hindus out of their Indian moorings and to launch them on foreign waters of Arabia and Jerusalem. Where is the necessity for this Hindu Code? Why don't you extend the provisions of the Indian Succession Act of 1925 by a stroke of the pen to the entire Hindu community? By this very convenient and simplified method—and we are very much enamoured of simple legislation—it will be very easy to provide for the entire Hindu society.

Before I conclude, I think it is my duty, and an honest duty, to sound a note of warning. You very well know that the Hindu law is a law not piloted from outside. It is not an imposition from above, it is not the creation of a sovereign power, it is not the result of a ukase of any king or of any legislature. That is the greatest merit about it. It is a spontaneous development from centuries past. The texts of the *Smritis* and The *Nibhandhaka* have not created the laws; they have only explained and elucidated the accepted principles of Hindu Law, but those principles as readable from the texts have never been the governing force of the Hindu society. The governing force of the Hindu society has been a consistently developing usage and custom governing the different sections of the society. That development was spontaneous. In fact, looking at it from a realistic point of view, the Hindu society is a working legislature in continuous session not of the few selected persons as this House is but a legislature of the entire community, that modifies and moulds its law according to its requirements. That is the supreme beauty of Hindu Law. And that you are distorting, that you are deforming by this piece of legisaltion by taking from it vitality, elasticity, mobility, spontaniety and adaptability to the everchanging circumstances of the society. Sir, I, as an humble Member of this House, have a duty to say that you must be very careful before you tamper with it. It is a law that has come into existence as a result of centuries of development and before you tamper with its time-honoured institutions, customs and usages, you should keep one thing in mind. The India of ours does not reside in urban towns like Allahabad and Delhi. The real India lives in the five lakhs of villages. The life of the villagers is so intimately interwoven with the texture of their society that whatever modifications you might make by this piece of legislation, they will resist to the limit of their might before you take away from them the time-honoured usage and customs to which they have been submitting as a matter of course for centuries. Without doing any benefit to the Hindu Society,

you will be opening the door for a few disgruntled persons who want to take advantage of this innovated piece of legislation.

Dr. Mono Mohan Das (West Bengal); Is he not casting aspersions on some of the members of this House ? He has repeated the same thing so many times.

Pandit Mukut Bihari Lal Bhargava : I have not referred to any Members of this House. My hon. friend should have the patience and the tolerance to hear the opposite views. My submission is that you cannot put a brake to this spontaneous growth and development of Hindu law by this piece of legislation and if you pass it, you will be spoiling the beauty of Hindu law rather than adding to it. This piece of legislation is so disastrous in its character and so destructive in its nature that it is difficult to imagine the bringing of a constructive approach to bear upon it. The Hon. Prime Minister and Leader of the House suggested the other day that we should meet in a formal or informal committee to devise a compromise upon which the orthodox and unorthodox sections can agree. I join issue with him. But I feel that the Bill has been conceived with a mental outlook and psychology which is wholly repugnant and unacceptable to Hindu ideology. Consequently, in spite of our sincere efforts to arrive at a constructive approach of this measure, it will be very difficult to do so. The safest course for the Government to adopt is to withhold this measure and wait for a more opportune time for a legislature elected on adult franchise with a mandate from the electorate to change the entire structure of the Hindu society. Until and unless there is such a mandate, I submit, and I question and question with vehemence the propriety of this legislature to deal with a measure of this vital importance to the Hindu society.

With these words, Sir, I resume my seat.

Shri Loknath Misra (Orissa : General) : On a point of order. Although I do not desire to oppose the consideration of this Bill, I think its consideration is totally barred and bolted by the very Constitution which we have recently passed. Of course, it may be argued that it has not yet come into force. But we are quite sure that we are not going to pass this Bill this time and by the time the Bill is passed the Constitution must have come into force. If you will permit me, I will detail my reasons for saying that this Bill is against the Constitution.

Mr. Deputy Speaker : I have heard the point of order sufficiently. The new Constitution has not yet been implemented. It has not come into force. I do not propose to give any ruling on the question as to whether it will stand in the way of this Bill being passed into law if it comes into force. Under the present Constitution, this House is thoroughly competent to get on with this Bill.

Shri T. T. Krishnamachari (Madras : General) : In view of the importance of this measure and the fact that the number of people who want to speak is large, would the Chair consider the desirability of using its discretion and imposing a time-limit ?

Some Honourable Members : No, no.

Some Honourable Members : Yes, yes.

Mr. Deputy Speaker : Order, order.

Shri M. Tirumala Rao (Madras : General): This point was raised by Mr. Sidhva and disposed of by you.

Mr. Deputy Speaker : Mr. Sidhva raised another point. He wanted to know if this House would continue the discussion tomorrow and what length of time has been allotted. It is an official Bill and it is, for Government to allot the number of days, I replied. The position is that the Speaker can only say whether debate on a particular Bill has been sufficient or not. So far as this Bill is concerned, hon. Members are fully aware that no time-limit can be imposed. (*Hear, hear*).

Hon. Member will kindly wait and see. The general discussion on this Bill was begun so early as 24th February 1949. It continued on the 25th, 26th, 28th, 1st March, 1st April and 2nd April. One hon. Member took six hours and eight minutes. We spent in all 6 days, 9 hours and 20 minutes. All the same, only 14 hon. Members have spoken so far. The last speaker who has just concluded, Pandit Mukut Bihari Lal Bhargava, started at 3-15 p.m. on 2-4-49 and went on till 5 that day—one and a three-quarter hours. Today he went on from 11-50 to 12-57. At this rate, we will have to sit nearly a year if all hon. Members are to have a chance to speak. Many of the points which have been made in the speeches are all very enlightening. I say nothing against the speeches. But, I have received a large number of requests from hon. Members for opportunities to speak.

Pandit Lakshmi Kanta Maitra (West Bengal: General): We are all in so much darkness. We want light from every side.

Mr. Deputy Speaker : Light from every side is coming, but if we proceed at this rate, light from many sides would not come.

Therefore, I would request hon. Members to limit their speeches, as far as possible, to half an hour. On all Resolutions fifteen minutes are placed at the disposal of hon. Members and they are able to put their cases perfectly well within that time. I have given twice as much time. But I do not insist upon it. It is simply my suggestion to the House. Otherwise, if a closure is applied tomorrow, possibly by that time a number of Members may have spoken and sometimes wittingly or unwittingly if the House is in favour of closure, it has to be accepted. I am giving a warning in advance.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways) : I only want to say that I hope to finish before the time-limit fixed by you. I hope you will permit me to proceed in the afternoon.

Mr. Deputy Speaker : It ought not to be said ahead. I am leaving it to hon. Members to decide, so that all Members may have equal opportunities. Normally, half an hour is the time-limit I suggest. If the House agrees.

Some Honourable Members : Agreed.

Some Honourable Members : No, no.

Mr. Deputy Speaker : Order, order, Mr. Sahu wants to say something.

Shri Lakshminarayan Sahu (Orissa : General) : Sir, I would like to know if priority for speaking will be given to those Members who are willing to restrict their speches to only five, seven or ten minutes.

Mr. Deputy Speaker : Therefore, if I have to accept that suggestion, I hope hon. Members will also indicate in their letters to me how many minutes they are likely to take and I will ring the bell as soon as that minute is over.

Pandit Lakshmi Kanta Maitra : Before you adjourn, I want to say just one thing. You said just now that it will be perfectly open to Members to move closure. But according to all parliamentary procedure, it is open to the Speaker to say whether there has been sufficient debate or not and whether the closure is justified or not. that is a well established practice and you also reiterated that you follow that. In view of that statement, do you say beforehand, even today, that you will have to accept closure tomorrow?

Mr. Deputy Speaker : The Chair has no right to make up its mind in advance. It is now 1 o'clock and the House stands adjourned till 2-30 p.m.

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

The Assembly re-assembled at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

HINDU CODE—*Contd.*

The Honourable Shri K. Santhanam : Sir, I rise to offer my whole-hearted support to the Hindu Code as it has emerged from the Select Committee. Sir, I have been watching the progress of this lawmaking from its earliest beginnings. I had the privilege of tendering evidence before the Rau Committee and since it has emerged from that Committee it has undergone many changes and, in my view, steady improvement.

Sir, I feel that this Hindu Code is merely a continuation, in the social sphere, of the great Constitution we have completed the other day in our capacity as a constitution-making body. Sir, what are the basic factors of that Constitution ? It is based on the unification, on the integration and on the strengthening of India as one political entity. Similarly this Bill is based on the principles of unification, integration and strengthening of the Hindu community. Sir, unless the Hindu community is unified, integrated and strengthened, I do not see how the great Constitution we have made can be successfully worked.

Pandit Lakshmi Kanta Maitra : Unified by divorce ?

The Honourable Shri K. Santhanam : The idea that politically you can be well-advanced, that in the field of economics you can preach socialism, but yet be a believer in social stagnation is wholly incompatible and unrealistic. India has to move on all fronts, or not at all and I think the change and reform in the social sphere is as indispensable as our progress in the political and economic spheres.

Pandit Lakshmi Kanta Maitra : Democracy in marriage also ?

The Honourable Shri K. Santhanam : My hon. friends may well ask why we should not compile a code for the whole country rather than a unified code for the Hindu community alone. Well, Sir, while

we were making the Constitution there were many who were asking . why we continued to have provinces, why we were building on the Government of India Act and why we were continuing to have Rajpramukhs ? Sir, our argument in reply was that while we wanted change and reform we wanted to build, as far as possible, on the existing foundations, that we wanted a judicious combination of conservation of the existing forces and the forces that make for change and reform. This Bill is based on the same principle. It seeks to conserve as much of the Hindu law as is consistent with modern needs and ideas and it seeks to change wherever such change is necessary. I think that is the only way the whole country as well as the Hindu society can progress without internal disruptions and violent revolutions. Sir, our policy is one of peaceful and voluntary change and this Bill is a notable attempt in that process of peaceful change in the social sphere.

Sir, I don's want to go into the clauses of the Bill. The time is not yet ripe for it and when we take up clause by clause it will be time to scrutinise particular provisions.

Pandit Lakshmi Kanta Maitra : That stage will not come.

The Honourable Shri K. Santhanam : Well, let us see.

Pandit Lakshmi Kanta Maitra : Not unless there are elaborate lathi charges outside.

The Honourable Shri K. Santhanam : There were people who were prophesying that the Constitution would never be passed ; but we have passed it. In the same way, we are going to put this Bill on the Statute Book.

Sir, I am not saying that certain clauses, or even parts are not susceptible of slight changes or adjustments.

Pandit Lakshmi Kanta Maitra : Slight!

The Honourable Shri K. Santhanam : But I shall confine myself to the broad principles contained in the Bill and, leave details to a future occasion.

Sir, this Bill has got four aspects, namely, codification, unification, rationalisation and reform.

Sjt. Rohini Kumar Chaudhuri (Assam: General) - And falsification too.

The Honourable Shri K. Santhanam : Well, I will leave that part to you. So far as the parts dealing with adoption, with minority, with guardianship and with maintenance are concerned, they are simply

codification of existing Hindu law. (*An Honourable Member:* Question). You may question it, but I think Sir B. N. Rau is a far greater legal authority than the hon. Member.

Pandit Lakshmi Kanta Maitra : That is absolutely no argument. He may be or not. I can understand an argument—but this sort of talk I cannot stand.

Mr. Deputy Speaker : Order, order.

Pandit Lakshmi Kanta Maitra : But what is the meaning in arguing that such and such a man is far above anybody else here ? Is that any argument ?

Mr. Deputy Speaker : There is no meaning in all hon. Members talking simultaneously. Each hon. Member will have his turn and I am prepared to sit here as long as the House wants me to.

So far as the hon. Member's reference to Sir B. N. Rau is concerned, he probably meant that he was a Judge of the Calcutta High Court and it is not unparliamentary to say that the opinion of a particular person is highly valuable. Even as an individual the hon. Member perhaps meant that he knows him much better than any other Member of the House.

The Honourable Shri K. Santhanam : Sir, I merely stated that Sir B. N. Rau is a better legal authority than the questioner.

Sjt. Rohini Kumar Chaudhuri : On a point of order, Sir, Hindu Law is absolutely and intimately connected with Hindu religion. Can anyone tolerate the idea of a non-Hindu being an authority on Hindu Law and principles ?

Mr. Deputy Speaker : I can well appreciate differences of opinion among hon. Members. But there is no room for excitement. Let there be patience first and all hon. Members will certainly contribute to the debate in a harmonious atmosphere.

Shri L. Krishnaswami Bharathi : The hon. Member who just now interrupted seems to say that Shri B. N. Rau is not a Hindu ; it is an insinuation which should not be allowed. Shri B. N. Rau is not here and it is your duty, Sir, to protect him.

Mr. Deputy Speaker : I am not in a position to say to what religion any particular person belongs. I do not know it personally. But I expect hon. Members to keep within limits, and because they have got certain privileges, they should not defame others. They should keep within limits, and if an hon. Member makes an aspersion, it will be wrong.

The Honourable Shri K. Santhanam : Sir, I do not mind interruptions; but if those who are opposed to this Bill think that they have the monopoly of such tactics, they are mistaken. Sir, I assert with all the emphasis I can that Shri B. N. Rau is as good a Hindu as any in this House. And so far as I am concerned, I may say that my ancestors have come from very orthodox Hindus, and up to this moment we have not eaten even a little bit of fish, and I may claim to be more orthodox than. . . .

Shri H. V. Kamath (C. P. and Berar : General) : Is eating or not eating fish a test of orthodoxy?

The Honourable Shri K. Santhanam : In my part of the country eating fish is considered to be the most heterodox fashion.

Pandit Lakshmi Kanta Maitra : And in my part of the country eating *iddlies* and *rasom* is considered most objectionable.

Mr. Deputy Speaker : Let hon. Members come to more lasting things like marriages and divorce, than *iddlies* and *fish*.

Shri R. K. Sidhva : Let us not reduce the House to a fish market.

The Honourable Shri K. Santhanam : I again say that so far as adoption, guardianship, minority etc. are concerned, they are merely codification of existing law, as can be found in the judgments of British courts. Sir, whatever Manu might have written, whatever Yagnavalkya might have written, the present Hindu law is the law as interpreted in the British Courts for the last one hundred and fifty years, and against this interpretation, even Manu and Yagnavalkiya are utterly helpless. So the Hindu law now is the law as interpreted and as laid down by the British judges in this country.

An Honourable Member : British judges ?

The Honourable Shri K. Santhanam : British or Britishized judges. Therefore, Sir, I think we are at least as competent to change that law as the British Judges who have changed the ancient law into the present Hindu law as it is.

Sir, I come now to the next aspect of the Hindu Code—the unification portion of it. I am surprised that any Hindu looking to the future should say that so far as the law is concerned, no unification is necessary, that each part can have a regional law, that in Bengal we can have the Dayabhaga law, that in Malabar they can have the Marumakkattayam law and other parts the Mitakshara law and so on, that everything should be as it was in the ancient days. I cannot

understand people when they say that in politics and in economics we shall be in the year 1950 A.D. but so far as the law is concerned we shall be in 1950 B.C. Sir, to say so is wholly a disintegrating and disastrous proposition. If Hindus have to be one community, if they have to have vitality they must all come under one law, whether it be Dayabhaga or Mitakshra. I can understand some people saying, "Let us have Mitakshara" or "Let Bengal come under Mitakshara". I can understand other people saying, let them all come under the Dayabhaga law. But to say that Hindus should be dissected into various regional groups, each having its own law, so that if a Bengali goes to Malabar, the courts would have to interpret three types of Hindu law, that I think, Sir, is pronouncing the doom of Hindu society. Sir, the enemies of Hindu society cannot ask for anything better than that Hindus should be administered by a dozen regional laws. Sir, by this Bill we are at last bringing Hindu society under one unified Hindu law, let it be any law, but it should be one unified Hindu law for the entire Hindu community, Sir, in this Bill ....

Sjt. Rohini Kumar Chaudhari : Sir, on a point of order, the hon. Member is speaking communalism in this House. He is talking of unifying all the Hindus, probably against the Muslims and others. He wants one law for the Hindus ; so he is preaching communalism.

Mr. Deputy Speaker : This point of order only enlivens the debate, but it is not really any point of order.

The Honourable Shri K. Santhanam : Sir, the day this Bill is put on the Statute Book, the whole process of assimilation will begin and it will not be long before the rest of the Indians in this country will begin to conform to that law, and if necessary, we shall give them minor changes so that the whole country will come under one civil code. Sir, this process is not a disintegrating process but a cementing process. The process will go on and before long.

Pandit Lakshmi Kanta Maitra : It is going on outside.

Shrimati G. Durgabai (Madras : General) : It is going on inside.

Pandit Lakshmi Kanta Maitra : Inspired by you.

The Honourable Shri K. Santhanam : I have been in this House too long to be worried by these interruptions.

Now, the question is whether we should prefer the Dayabhaga law or the Mitakshara law. My friend Pandit Mukut Bihari Lal said that Mitakshara law is followed by twenty crores of people and Dayabhaga is followed by five crores, and asked why should we choose the law of the five crores rather than the law of the twenty crores. I do feel

that comparatively Mitakshra law was intended to serve the needs of ancient rural communities whose main property was agricultural land. It was on the basis of that conception of society that the right of birth and the right of survivorship were evolved. But we are fast evolving out of that primitive community into a modern community in which property goes from the immovable to the movable property. You have immovable properties diminishing and movable properties increasing. Even immovable property is being converted into movable property, in the form of shares, cash savings deposits and government securities and other things. Therefore, we should adopt that system which is in tune with these changes from the tangible immovable property to intangible and notional property. Where property is largely intangible, this right of birth is really impracticable. You cannot enforce it. It will always be open to the father to dispose of securities or shares or movable property. It is not possible for a son to inherit a right in shares. It is possible for him to inherit a share in agricultural land, but it is not possible for him to inherit a right in cash securities or other movable property. That is why this Bill has given preference to the Dayabhaga system of law rather than the Mitakshra system of law : not because it had any disrespect to the twenty crores who are under the Mitakshara law, nor because it had any special preference to the Dayabhaga system of law. Today, the right of inheritance by birth and right of survivorship have become archaic and impractical institutions.

Pandit Lakshmi Kanta Maitra : Primitive.

The Honourable Shri K. Santhanam : Either we drop them deliberately through legislation or they will be discontinued in an irregular and disorderly fashion.

Pandit Lakshmi Kanta Maitra : Follow Bengal in other respects also.

Some Honourable Members : Order, order.

Sjt. Rohini Kumar Chaudhari : On a point of order, Sir, what right has a Member to call ' order, order '. I find Shrimati Durgabai calling 'order, order'.

Shrimati Renuka Ray (West Bengal : General): Is this a point of order ?

Mr. Deputy Speaker : I am extremely glad to find that hon. Members are sharing the right of the Speaker along with me.

Sjt. Rohini Kumar Chaudhari : *(rose).*

The Honourable Shri K. Santhanam : I am afraid I shall not be able to give way to my Hon. friend from Assam.

Sjt. Rohini Kumar Chaudhari : All right, I shall keep quiet. If you want to suffer from the tyranny of women, you suffer.

Mr. Deputy Speaker : Order, order.

The Honourable Shri K. Santhanam : Sir, much has been said about the so-called sacred institution of joint family. In the mediaeval and ancient times, this so-called joint family might have served a very useful purpose. It is not my business to deny that. But, today, joint family exists only in controversy. I know the peasants ; I have been in the rural areas probably much longer than many of you. I have worked for ten years continuously in the rural areas. I know, Sir, the first thing, when a peasant's son marries, the peasant does is, to set up a new house, give the son his share in the ancestral land, one acre or half an acre or one-quarter of an acre, and establishes the son as a separate family. Unless this is done, the peasant knows that his family will be disintegrated. In the case of certain very rich people, the so-called joint family may continue with a double system of account keeping for certain purposes, to cheat the Income-tax and for other purposes. Ordinarily, even today, in the middle class families, what happens ? One son lives in the village; another son is in Delhi in service in the Government of India; another son is in Madras in some other service; another son does business. What is the meaning of maintaining a joint family and ancestral property ? It is better that they are allowed to partition. Then, if they want voluntarily to come back and live together, let them become a co-operative society, let them become any kind of legal personality suited to modern conditions. To continue the joint family owing to ancestral worship, without regard to the existing circumstances, I think it is sheer coservatism run mad.

Shri Brajeshwar Prasad (Bihar : General) : A Daniel come to judgement.

The Honourable Shri K. Santhanam : My hon. friend from Bihar is a supreme example of Daniel as he has proved in the constitution making, and I am sure he will prove himself so here.

Shri Brajeshwar Prasad : You are also.

The Honourable Shri K. Santhanam : I am not giving way.

Mr. Deputy Speaker : Let there be no talk across the table. I am exceedingly sorry ; I have been a little indulgent. I find an acrimonious controversy is carried on. So long as there is good humour there is

no harm. However, the hon. Member must be allowed to go on. He may lose the trend of his thought. Otherwise also it is inconvenient to go on being harassed.

Sjt. Rohini Kumar Chaudhari : Mr. Santhanam is in a very good mood.

The Honourable Shri K. Santhanam : Because my case is simple and straightforward and I need not get a bad temper or raise all kinds of fantastic bogeys.

Let me now come to the next aspect, that is, rationalisation. One point which has evoked the greatest amount of opposition is the daughter's right to the father's property. If the old property had remained intact and if property consisted only of agricultural lands, then I can sympathise with those who say that to bring in a foreigner, an outsider into the family may mean great deal of inconvenience. I have already stated that property is moving from immovable property to movable.

Dr. P. S. **Deshmukh** (C. P. and Berar : General): How can it ? All landed property cannot be dissolved. The Hindu Code Bill will not evaporate lands.

The Honourable Shri K. Santhanam : So far as the peasant community is concerned, they automatically divide on marriage. If a son-in-law is willing to come and live in the village, I do not see why he should not be allowed.

Dr. P. S. Deshmukh : Hereafter, the rule will be divide and rule.

The Honourable Shri K. Santhanam : If the sons can divide, the daughter also can divide. In the future property will consist of cash securities and other things. Therefore, there is no reason why the daughter should not have the same right as the son. As a matter of adjustment, I am prepared to throw out one or two ideas. In estimating the share of the married daughters in a family, I think it would not be unfair to set off any amounts which may have been spent for their marriage. In many of the middle class families, the amount spent for the marriages is often equal to if not greater than the share which the daughter may get. I think that would be a fair set off. Similarly, if there is only one dwelling house or if there is only a small extent of agricultural land, I think it will not be unfair to say that so far as the daughter's share is concerned, she must take her share in the form of cash or other movable property rather than insist on a partition of the house or the immovable property.

Ch. Ranbir Singh (East Punjab : General): Wherefrom to bring that cash ?

The Honourable Shri K. Santhanam : If you have a creditor, where will you find the cash ? Is it not possible ? It may be paid in easy annuities or in some such manner. In a harmonious family, adjustment will be easy; in an unharmonious family, courts can find ways and means of adjusting the burden without inequity to any party. Subject to these adjustments, I do not see any rational justification why the daughter should be treated exactly on the same basis as a son. I do not think there will be any kind of hardship. All kinds of bogeys have been raised. After all, the daughter becomes a daughter-in-law. If the daughter gets a share, similarly the daughter in the other house gets a share and therefore in the long run, except for an adjustment of legal rights through the establishment of self respect and social equality between man and woman, the property arrangements will remain much the same; because at present the daughter does not take away from the father's house; she gets more in her father-in-law's house. Hereafter, under the Bill, she will take a little from the father's house, much less from the father-in-law's house. In the long run, there will not be much difference in the distribution of property. Only the process will be more satisfactory, and more self-respecting to all the parties concerned. The daughter will feel that she is as good as a brother; that is all. I think that that is a feeling which we ought to encourage in this country. We have removed all social inequalities in policies; we have given the women the same equal franchise as men. Why in point of inheritance and succession alone should we have any kind of stigma based on sex ? I think the sooner we voluntarily give it up, the greater will be the strength of the country. Otherwise, some day or other, on account of the adult franchise, there will be such a vast volume of feeling among the women all over the country that would compel us to make the change. Then, it would be a disgrace to the men of India. It is better you do it now in advance of adult franchise so that we can go to the probably five or six crores of women who will be voters and say, "look here, we have done the right thing before you wanted it; we have given you the votes; we have given you property rights; you are equal to men; there be no more sex conflicts."

The last point I have to deal with is the question of reform. It
3 P.M. is in the field of marriage there is any real attempt at reform. It is partly permissive and partly compulsory. The one

compulsion is monogamy. I want all my friends and Members of this House to stand up and say whether they approve this reform or not. They have been very prudently silent on this subject and in spite of speaking for three hours, I don't see why people avoid this subject. Do they want to establish monogamy or not ?

Pandit Lakshmi Kanta Maitra : Monogamy is already established.

The Honourable Shri K. Santhanam : Some people actually enjoy the luxury of two or more wives, others enjoy mentally the possibility of more wives!

Shri H. V. Kamath : What about polyandry ?

The Honourable Shri K. Santhanam : Therefore I say this that this is one thing in which the old Aryan tradition had made a profound mistake. It is time that we who consider ourselves to be the glorious descendants of the great Aryans now confess that it was a mistake and correct it rather voluntarily and unanimously. This polygamy must go. But complete and absolute monogamy will also become a legal fiction unless you provide reasonable facilities for divorce in very hard cases. Unless we provide such an outlet, it will bring evil.

Smt. Rohini Kumar Chaudhari : Do you agree for the women being prosecuted for adultery ?

The Honourable Shri K. Santhanam : I agree to women being subjected to same penalties for the same crimes but probably my hon. friend from Assam has a soft corner for that subject. Monogamy and divorce provisions go together. They must be taken as one co-ordinated law and in this respect this Bill does propose a reform which is not sanctioned by the Shastras but this is a reform. . . .

Pandit Govind Malaviya (U. P. : General): Do I understand that the hon. member will oppose monogamy also if divorce is not sanctioned ?

The Honourable Shri K. Santhanam : I will support monogamy in any case but I will support it in a rational form rather than in an irrational form. If my friend wants monogamy and at the same time that wherever a husband is impotent or a criminal, there should be no divorce or *vice versa*, then I think he wants monogamy in an irrational form. I want it in a rational form. That is the difference between us.

I will just touch one other aspect. One other great merit of this Bill it takes away all legal sanction from the caste system. We

abolished untouchability in the Constitution. Now we take the social reform further and take away all legal sanction for caste. Here in this Bill whether it is for marriage or for any other purpose, all Hindus from the so called Untouchables upto the so called Acharya Brahmins—all of them are one.

Some Honourable Members : Without a caste, who is a Hindu ?

The Honourable Shri K. Santhanam : My friend asks "Without a caste, who is a Hindu ?" With the caste, I think, Hindu is a monster according to me. (Hear, hear). In this country we want to establish a Hindu Community without caste. Either we cease to be Hindus altogether or we establish Hinduism without caste. There is no alternative left for us.

Shri Lakshminarayan Sahu : Mohammadans also can be called Hindus.

The Honourable Shri K. Santhanam : On the day the Muslims accept the Gita and Vedanta, I am prepared to embrace them as Hindus.

Shri M. Tirumala Rao : Even Gita refers to caste.

Mr. Deputy Speaker : Let there be less of this cross talk. The hon. Member may go on. Each one is trying to persuade the other.

The Honourable Shri K. Santhanam : In spite of interruptions I am going to convince some of my friends. My friend Mr. Tirumala Rao says that I am swearing by the Gita. What I am saying is they form the minimum article of faith for all the Hindus. Therefore, if after this Bill, there are no distinctions between Hindus, Muslims and Christians, then it is better for the whole country. We are not proud of keeping alive distinctions which have no meaning or which are irrational. If Muslims also remove all such distinctions which are irrational; if Christians remove all distinctions which are irrational, we shall before long meet on a plane in which we are all one—whatever we may call ourselves. Meanwhile our object both in the Constitution and in this Bill is to see that the majority community in this country are strong, united and have shed all prejudices and practices which have divided it into sects and will become an invincible foundation on which the glory and strength of future India can be built. I am sure that without this Bill and without the changes the Bill advocates, the Hindu community will be a weak, torn and unprogressive community and if the majority of the people continue in that condition we cannot make much of the political and other economic opportunities which the Constitution and God have given us. Therefore I have said

this is really complementary to the Constitution which we have enacted and it is in the supreme fitness of things that the same body which enacted the Constitution will also be enacting this Hindu Code into Law. I hope it will be put on the Statute Book and our descendants will say that these people not only enacted the Constitution but also reformed the Hindu law.

Pandit Lakshmi Kanta Maitra : Destroyed the Constitution !

The Honourable Shri K. Santhanam : I believe our ancestors are watching and are blessing us for this.

Shri Loknath Misra : On a point of information. My friend has just now sworn by the Vedanta and the Bhagvad Gita. Is he prepared to reject any provision that will go against the tenets of these ?

The Honourable Shri K. Santhanam : If they are based on wrong premises, I am bound to reject them.

Mr. Deputy Speaker : It is unnecessary to carry on this argument.

The Honourable Shri K. Santhanam : Sir, I do not want to tire the House. I have dealt with the main points which came to my mind. I wish to appeal to those who by ancient prejudice have come to feel that it is their duty to oppose the Bill to reconsider their attitude, to have another vision—the vision of a Hindu community without caste, without distinctions, all pulling as one man. If we could convert the present disintegrated, weak and for a thousand years servile Hindu community into a very strong, healthy and great community, we would have done a work which our sons and grandsons will be proud of.

Shri H. V. Pataskar (Bombay : General): Sir, we are considering a Bill which is going to revolutionise the structure of the Hindu society. That society comprises more than about 25 crores of people at the present time. It is therefore not unnatural that even the common man has begun to take interest in what is happening and it is best in the interests-of all sides, to take into account the fact that when we are revolutionising by this Bill the whole structure of Hindu society, it is not desirable that we should ignore the feelings that have been roused in the common man with respect to the provisions contained in the Bill.

The common man is at the present moment ill-equipped with education. He is worried with the problem of feeding himself and his dependents. He is faced with scarcity of clothing, for want of funds if for nothing else, and he generally finds life so difficult. Even then he has begun to take interest in this legislation because he thinks that

this Bill is going to affect the structure of his Hindu society, which is the growth and product of several centuries past. Therefore it is that we must first educate him before we undertake the serious task of changing the whole structure of the society to which he belongs. I will make it first clear that I am not opposed to many of the provisions of the Bill but the time selected for the purpose, to my mind, is most inopportune. I propose to take only 20 minutes and if I am allowed to make my remarks without interruptions I will be able to finish it within that time, because I am aware that there are many members of this house who are interested either on one side or the other and who want to take part in the debate.,

The common man, so far as I have been able to understand his reactions to the Bill, thinks that at present the attention of the Government should be concentrated on the problems which affect him in the matter of his food, clothing, inflation and several other things. When he is worried about his day to day needs and what he requires for his sustenance he naturally asks why are the Government interested in what form his marriage should be, whether he should have one wife or more, when he cannot even sustain one. All these things may be necessary and I am not opposed to reform. It has been admitted and our leaders are also saying it that we are passing through very critical times. We know the difficulties of the people, There is scarcity of food, clothing and the other necessities of life. Compared to the common man we are living here a comfortable life. He naturally thinks that what the leaders should concentrate upon is more the solution of his day to day problems than the problems relating to marriage, inheritance, etc. These things have been there for centuries past and it would not matter if they go on in the same way for some more months or even years.

If our sisters who are enthusiastic about the Bill or our other friends who are clamouring for the immediate codification and amendment of the Hindu Law, if they approach the common man in the rural areas, they will find that he is so much worried about so many other things that he is surprised why at this moment you should rush a measure of this sort through in this house. He naturally thinks that this should be stayed for the time being. There is quite a lot of discontent in the country. On account of the partition there is the problem of the refugees who have to be settled and sheltered. At this moment is it necessary to interest ourselves so intently on this question, as

to what form our marriages should be ? The time chosen for rushing the Bill through is not very opportune and it is likely to add to the difficulties of the situation rather than do otherwise.

What are the subjects dealt with under this Code ? Marriage, Inheritance and Adoption. So far as marriage is concerned there is even now the Civil Marriage Act, under which those that do not want to marry in the orthodox way can marry. Many people are as a matter of fact doing it. Therefore this measure does not look so urgent as made out.

An Honourable Member : Under that Act you have to say that you do not belong to any religion.

Shri H. V. Pataskar : That is gone my dear friend : It is dead and gone, long past. Under the Civil Marriage Act, any two Hindus belonging to any caste or community, without making a declaration that they do not belong to any religion, can get married and there is nothing to prevent them from doing so.

There is much agitation with respect to the question of inheritance. We have laid down the equality of the sexes as a principle in our Constitution and in these days it is not possible for anyone to go back upon it. The objection raised is not with regard to the equality of the sexes. A father who has a son and a daughter loves them both equally and there cannot be any difference. But so far as inheritance is concerned it has to be looked at from a different point of view. For that you have to look at the development of the present structure of our society. This structure has been evolved through a process of evolution during the last many centuries. Hinduism is not a religion in the sense in which Christianity is a religion, Zorastrianism is a religion or Islam is a religion . . .

An Honourable Member : What is religion then ?

Shri H. V. Pataskar : Christianity is the religion of those who believe in Christ and follow his teachings in the Bible. The Zorastrians are the followers of Zoraster and Islam is the religion of those who believe in Mohammad the Prophet and the Koran as their sacred book. But what is Hinduism ? Hinduism includes not only the followers of the Vedas or the followers of Rama and Krishna or Shiva or of the innumerable gods in various shapes and forms but it also includes those who worship nature and those who do not believe in any God whatsoever and those who do not believe in the oneness of God also. Their places of worship, methods of worship and objects of worship

are all varied. Hinduism is a growth which has absorbed all the different currents and streams of social and religious beliefs and practices prevailing over several centuries. It is an all embracing faith consistent with the ideal of कृण्ववन्तोविश्वमार्यम. Hinduism at present is a growth which has contrived to combine in it all these various streams of life. At present Hinduism may be a cast-iron system, but it has not always been so. Our religion is based not on the tenets of one particular man or of one particular book, but it is based on what is *dharma,* and धर्म : means धारयते अनेन इति धर्म : or धारणात् धर्मम इत्यादुह : *Dharma* is that which sustains society. That is the ideal on which our Hindu society is built, namely that which is necessary for the sustenance and advancement of society. Of course I do admit that the present state of Hindu society is not a very happy one. But it has not been all along so. Therefore I take you to this point because it will give you an idea as to why there is objection to this Bill. That which sustains society is religion and sustenance of the society is our ideal. Our society may appear stagnant at present, but it is not, has not been really so. Hinduism has undergone vast changes in the course of its evolution. I am not afraid of changes. It has undergone several changes in the past. At one time Buddhism was flourishing in this land and engulfed not only Bharat Varsha but it spread to far off countries beyond Bharat Varsha. But today there are very few Buddhists to be found here. What has happened to them ? They have been absorbed in Hinduism, they have undergone a metamorphosis, and we of the present generation are their descendants. That shows that we are not a stagnant race and that we have adapted ourselves to the changing needs of society. I for one be changed. That is not the real nature of Hinduism. And I am not one of those who say that what we now call Hindu Law should not be changed. Our Law has in fact undergone changes even during the period of the British domination.

The previous speaker, the Hon. Mr. Santhanam, rightly referred to the fact that judicial interpretations by courts which were not conversant with the original tenets of various laws regarding inheritance, adoption and marriage have not only changed the course of our social and economic life but have created many anomalies also. It has certainly become desirable to remove those anomalies and bring our Law in conformity with the changing needs of society. The world is changing fast and we cannot but be affected by what is happening elsewhere. We do not wish to say that we will keep ourselves away from the

rest of the world. That is not the idea. But the codification of the Law is one thing and amendment of it is another. This Bill seeks to do two things. We want to codify the law and amend its provisions. So far as codification is concerned, I understand it means that we want to remove the anomalies. At the present moment we have got so many systems of law prevalent. There is Dayabhaga in certain parts, there is Mitakshara in certain other parts, and the Bombay school has its own distinctive features. And there is what is called Marumakkattayam in certain parts of South India. But the areas where they are prevalent have also become well-defined, and there is a certain amount of stability. Therefore, if we proceed first with the task of codifying the law as it stands at present in these well-defined areas, that itself will not only bring about uniformity but it will also lead to a process of amendment, at a later stage. Mere codification of the law as it stands will also not evoke much controversy, because that is the existing law. Irrespective of the question that it has been modified by the courts consisting of British judges, there is a certain stability about it. Therefore, if we only confine ourselves to codification I think, much of the opposition that we see at the present moment will not be there. Not only that. If we do the codification only, we will secure the good will of the people and I believe that it will facilitate the amendment of the Hindu Code for certain other matters and by gradual stages subsequently. But the amendment of the existing law in the way it is tried to be done is another matter. Codification and amendment of the law have been hanging fire for the last so many years. In my view if we had proceeded with the codification only as a first step, the law would have been codified long ago. Ever since the Rau Committee was appointed, evidence was taken and so many Reports and so many Bills were formulated. But they tried to do two things simultaneously, namely, codification as well as amendment. Naturally, both have remained unfulfilled. If they had confined themselves to codification only, it would have been done long back and the stage would now have been reached for amendment. That is my view of the matter.

The present Bill deals, as I said, with three distinct matters, namely, marriage, inheritance and succession. Let us see what the basic idea of our society is. With the impact of modem ideas, modern education and modern methods of life the question of equality of sexes has naturally been agitating the minds of people, particularly of the

educated women of the country. We have also accepted that equality in our Constitution. So, superficially looked at, it strikes one as to why there should be any difference between a son and a daughter in the matter of inheritance. But the question is not such a simple one. A father's desire for the well-being of a son or daughter cannot be different. Naturally his love and affection is bound to be equal. No sensible man can think that the son should get everything and the daughter nothing. In fact that has not happened. Reference was made that even in the middle-class families,—leave aside the rich, they are very few in number—the father spends much more on the marriage of the daughter than what his son could ever hope of getting, in many cases even at the cost of the education of his sons. I say 'in many cases'. That is my reading of the matter. Why then is there opposition in regard to inheritance ? Even the Sanatanist loves his daughter as much as his son. We cannot say that Sanatanists make a difference in this respect. The opposition is due to an important factor for considering which we must look to the whole structure of our Hindu society.

A reference was made by my hon. friend Pandit Mukut Bihari Lal Bhargava in this respect. I would like to elaborate that point a little in as short a time as I can. The whole structure of our Hindu society is evolved through centuries and centuries of time. In the structure of our society the basic unit is the family. And on the continuity of that family as a unit rested naturally the stability of our society. It is not based on an individual as unit, but more or less the basis of the whole structure is the family as a unit. And the continuity of the family was naturally the main object with which all our laws and customs have been evolved from time to time. The pivot therefore was the continuity of the family which was the unit of the structure. Daughters naturally by marriage pass into a different family while the sons remain in the family to continue it. To foster the continuity and to prevent its being broken up, the joint family system was evolved. Why was the joint family system a peculiar feature of Hindu society ? Because Hindu society is based on the continuity of the family. That is why the joint family system is a peculiar institution of Hindu Law not known to other systems of law which are more or less based on individuals. Till only a generation or two back the joint family system worked well. It has maintained the continuity and stability of our social structure for centuries past. That is why there is objection to the

throwing open of inheritance to the daughter. That objection is not for political or social reasons but because if you open the inheritance to a daughter the result is that the whole social structure based on the joint family system will be broken.

The trend in the modern world is towards individualism. The joint family system is cracking in many places. I would go to the length of saying that the joint family system would not continue for all time under modern conditions. But as it is there, the question is whether we shall gradually replace it by the individual as the basis of our society or whether we shall break it up by law as is proposed to be done by this measure. If we want to break up the Hindu society suddenly, then I am afraid we shall be rocking and shaking the foundations of that society which may result in consequences unforeseen and unpredictable. The danger involved is not the mere opening of inheritance to daughters but the fact that by that opening up of inheritance the whole basis of society is involved. Hence the opposition. If only we try by an evolutionary process to help in the process of disintegration of the family which has already started owing to various economic and social causes, the same results as are aimed at will be achieved but not suddenly and abruptly. There is a clause in the Bill which says clearly that from the date of the commencement of the Code the whole joint family system as such will disappear. You are trying to do it suddenly and to my mind that is sure to rock the very foundations of the society which has been based for centuries past on the joint family as a unit of society. I would appeal to my enthusiastic reformer friends that while I am one with them, that this system no doubt has to be changed, and that as the world stands today no one will be able to resist it for too long, while that is so the question is whether we shall do it gradually, whether we shall carry the people with us and go as far as they come with us, or as far as we can drag them with us, or on the other hand whether we shall suddenly, by a stroke of the pen and by legislation, say that all this joint family system is destroyed. Even in these days when owing to abnormal circumstances people are worried by so many problems, this question is attracting their attention and therefore any abrupt action is likely to result in a state of affairs which is desirable neither to the reformers nor to the others. I agree we can't remain stagnant. The Hindu society has undergone so many changes in the past but by a different process altogether. If we try to force the events which must happen gradually, I am sure the result is not going to be very happy.

Sir, I am surprised at one thing. Here we are trying to preserve adoption. I don't know for what purpose. Adoption is a thing which is peculiar to Hindu law. In other societies also children are adopted but not for the purpose of continuing the family, only to satisfy the natural craving in any human being to have children and to rear them. I am told that in America and England also people do adopt children but there the object of adoption is different. The adoption as envisaged in the present system of Hindu law is peculiar and it is so because the Hindu structure of the joint family is based on the continuity of that joint family. But after the break up of the joint family in the way you are trying to do by this legislation, what is the necessity for making a provision for adoption? Look at it from a different view. Why was adoption a peculiar feature of Hindu society ? Because the main feature of the Hindu society was the basis of the joint family and its continuity required adoption. With the breaking up of the joint family and the coming of individualism, I don't see why we should waste our time on trying to preserve adoption. I am certainly against adoption. Even in the case of adoptions that now take place, 99 cases out of 100 result in litigation in courts because the whole idea has undergone a change. The widow adopts a child thinking that the boy adopted might be useful to her in managing her property and affairs free of charge. The boy thinks that by adoption he will get something from the person who adopts him for nothing. So, at present adoption takes place purely from a motive of self-interest; adoption as conceived in the olden days is disappearing. As a lawyer of some standing and experience, I have found that in 99 out of 100 cases of adoption the result has been litigation because the original idea underlying adoption has undergone a change. But now with the coming into force of the provisions of this Bill the whole joint family system will disappear, the individualistic society as in other parts of the world will come and it is therefore not necessary to make any provision regarding adoption. It would be confusing to do so. If we are consistent and logical in what we are doing, we should do away with adoption altogether.

I have now to refer to marriage and divorce. A point was raised by the Hon. member Mr. Santhanam who asked everyone whether they were against or in favour of monogamy. I would say that monogamy is absolutely necessary in these days. I don't think there is any member in this house who is opposed to it. But is the Hindu

Code Bill necessary for that purpose ? We have got a measure in the Bombay Province by which, so far as that Province is concerned, there is monogamy and as a natural corollary to it divorce in certain cases is allowed. We have not gone further than that measure in these matters. If the only object is to ordain monogamy then I say there can be no objection to it, for, apart from ideological reasons there are practical reasons also in its favour. Nobody now wants to have more than one wife. There are very few excepting a few millionaires and multimillionaires who can afford to have that luxury; others can't have it. It is not even a mental luxury as suggested by the hon. Mr. Santhanam for the simple reason that one cannot manage without anxiety even with one wife and her children. What mental luxury can a man derive by the idea of being able to marry another wife under these circumstances ? As a matter of fact, it is quite simple proposition and I think both sides would agree that monogamy must be the rule. But let us not try to confuse the real issue regarding divorce. As soon as you have monogamy the result is that supposing one of the mates is a leper you have to make arrangements to see that the other is relieved from that liability or else you will be denying him the conjugal right. In some respects divorce is a corollary of monogamy. Even Manu, the great law giver, has provided for such cases.

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ पंचत्सु आपत्सु सुनारीणा पतिरन्यो विधीयते।

But the main point so far I am concerned is that whether you lay down monogamy by law or not it is going to be the rule with at least 9,999 out of 10,000 people. So that question need not agitate our minds at all. Sir, apart from all these considerations, there is one last point. A uniform Civil Code must be our endeavour according to article 44 of the Constitution which we have already passed. We have incorporated a Directive Principle in our Constitution that the State shall endeavour to secure a uniform Civil Code throughout the territory of India. I would like you seriously to consider whether by enacting a measure like this only for the Hindus we are advancing the cause of our progress towards that ideal. I should think that we are going backward rather than forward. My hon. friend Mr. Santhanam seemed to think that after the passing of that article 44, we are trying to progress towards that ideal by this measure intended to weld Hindus into one. It may or it may not be so. What is to be welded in the interests of the security of our nation is not the welding of Hindus alone but all the citizens of this country. All the inhabitants of India

should be welded into one. Marriage, inheritance etc. form part of civil codes of all the countries world over. They must do so in India also. That Code should apply to all citizens whether they be Hindus, Christians or Parsis or Muslims. From that point of view, we are going exactly in the opposite direction. I tell you why. The shibboleth of no interference in religious or semi-religious matters was the creation of a foreign government. It was imposed upon us in their interests and not in our interets. What is there today to prevent us from including all these things in a uniform Civil Code ? The present Hindu Code was conceived under different circumstances, and at a time when there was no ideal of having a uniform Civil Code. But since then, things have changed enormously and especially after Pakistan, it should be our endeavour to bring closer all the different elements in the country, be they Hindus, Christians, Muslims or Parsis. I do not want that anything should be done for Hindus alone in such matters. We have already decided upon joint elections for welding all the people of our country into one. One uniform Civil Code will further bring all the people together. That is the process which we must follow and which demands the attention and interest of all of us. We must give up this idea that we cannot interfere in the laws of inheritance and other social matters of persons belonging to other religions. That idea must go. At the present moment,instead of building one well-knit society, we want to stick to the old thing which was conceived at a time when the aim was to keep us apart. Now the idea is different. The security and well-being of our people demands the enactment of a uniform Civil Code. I do not care whether I offend the susceptibilities of some orthodox friends when I say this, but I am quite frank and open. If things are to be done, they must be done in the right way. We cannot partly stick to the old things and partly bring in new things. In this connection, I can mention that a, uniform Civil Code is in operation in Goa. The Law minister himself probably knows that. The laws of inheritance etc. are applicable to Christians, Hindus, Muslims and everybody alike in that part of India under the Portuguese. If that is so, why should we be afraid ? Our fear is the result of what we have inherited from the past—this shibboleth, I said, of noninterference in religious or semi-religious matters. But that was done by the British for their own purposes, because they wanted to keep us apart. Now our ideal is to unite all our people in the nation. What we ought to do is instead of proceeding with a Bill of this nature,

our Law Minister should, immediately after the 26th of January 1950, bring forward a uniform Civil Code applicable to all people throughout India. I know my enthusiastic sister Members thought when I rose to speak that I was an opponent of this Bill. Let me hasten to add that I am entirely for equality and all those things. But this is not the way in which we should do it, by destroying one thing and creating difficulties in another. For the sake of a uniform Civil Code, we can go and tell our Hindu friends that the joint Hindu family must go, that it is necessary in the interests of the nation. But what we are doing is in the opposite direction. I am afraid it will lead to very undesirable and unforeseen consequences. I will just cite an example. In Ahemadnagar City in Bombay province, a young Hindu widow wanted to marry a Muslim. I do not know whether it was a love affair or what it was. But she wanted to marry a Muslim. As you know, those days we were passing through critical times. There was a lot of trouble. There were riots and some lives were lost. So this Muslim gentleman got afraid not only for the sake of his own safety but the safety of his community. He said I do not want to marry or do anything of the kind. She could not marry without conversion to Islam as the Muslim gentleman had already wife and children. She could marry only if she converted herself into a Muslim. In the Province of Bombay we have also enacted a measure which prevents a Hindu from marrying more than one wife at a time but does not prevent Muslims from doing so. By the present Bill also you are giving the exclusive right to a Muslim to have as many wives as he likes or at any rate up to four. Now what happens is, if a man,—a very wealthy man—wants to marry another wife, he can get himself converted into a Muslim and he can have as many wives as he likes. Considered from all points of view, the interests of our country demand that hereafter at any rate we should strive to achieve a uniform Civil Code for all people. That is what is happening all over the world. As I pointed out before, such a code exists even in a Portuguese territory in India *viz.* Goa. The present Hindu Code is an artificially engineered device of the former rulers, when they tried to keep us apart. We must try to get out of that rut. We must endeavour to form a well-knit, uniform society. We want to form a single State, not based on religious tenets, whether they be Hindu or Muslim or any other, but a truly secular State. For this a uniform Civil Code is absolutely necessary. I therefore suggest that this Bill should not be proceeded with. It will serve no purpose. Therefore, I appeal to my hon. friend

the Law Minister to withdraw this Bill, bring forward a uniform Civil Code regarding the matters covered by this Bill applicable to all citizens alike whether they are Hindus, Christians, Muslims, Parsis, Jews or others.

* **Shri Ram Sahai** (Madhya Bharat): (*English translation of the Hindi speech*.) Sir, while welcoming this Bill at the time it was being referred to the Select Committee, I had submitted that the Members of the Select Committee should consider some of its features which are at variance with the modern culture and civilization which we profess these days. But I note they have paid no particular attention to that. Only yesterday we have come to know that once more, a Committee is going to be set up in this connection. For this reason alone, I stand here to take a little time of the House. I am not opposed to this Bill. I seek only to bring in certain amendments which may accommodate to some extent the views of those who are opposed to it and that is the only consideration which has guided me to stand here to take a few minutes of the House.

The hon. Mr. Santhanam, I have to submit, had observed that through this Bill we were going to discard all caste distinctions and thus marching towards integration. I agree that such an idea and a Bill of this type is worthy of our welcome and, as such, must be welcomed. In my opinion nobody need object if it becomes possible to have inter-caste marriges, adoption and develop other family relations with one another. But, in this regard, I feel a little difficulty which I intend to place before the House. This is over the succession issue. The custom of inheritance, no doubt, prevails and is practised at many places while in some a similar custom is being introduced in the Hindu Society. But considering its general set-up, it seems to me and I am of the opinion that ultimately this won't prove to be a good thing. My opinion is not based on any desire to withhold daughters' rights or deny equal rights to women and for the matter of that to treat them on a different footing. I emphatically disclaim any such motive. I doubt only if the idea can be made a workable one in a suitable way in he general set-up of our society in which we are living at present and which has been followed by us for so long. For instance, I want to say one word in connection with the right of inheritance. Herein share on equal basis has been conceded to daughters. I have no objection even if

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 496-98.

they are given a greater share. I want only to place before the house a few things in connection with some possible difficulties which may arise in future whenever such a problem comes up. At present girls enjoy a status in the Hindu Society which none else enjoys. Consciously or unconsciously we have tampered with the social regulations for the worse and now have to bring up this Bill as a repenting and a compensating measure. This is certainly our misfortune. Despite this I will assert that there is much scope left for reformation. To me no Hindu father can ever desire to mete out a prejudiced treatment to his daughter, rather he wishes to give away more and more to her.

Babu Ramnarayan Singh (Bihar : General): It is correct to a large extent.

Shri Ram Sahai: He wishes to marry her in the house of a man placed better than himself. Not to speak of the father only, I am in a position to assert that even no Hindu brother can desire not to marry his sister in a more fortunate family. There may be found an exception in thousands or lacs of cases. But I think that such an instance is almost non-existent. I fail to understand why then the issue of parity between sons and daughters in the matter of inheritance is made to confront us. I say so as we have before us the quarrels among the brothers over the division of property in the middle-class of our people. The daughter is given her share in the other family. But should she think of having a share in his father's property also; in my opinion it is certain to lead to disruption in our social structure. Out of this consideration I have come before the House to make these observations. In my opinion such a course is bound to impair the affection between a brother and sister to some extent. When disruption is possible among the brothers with a common family-link over the division of property, surely more serious quarrels will arise with daughter living in a different family. When such quarrels can arise among brothers who have a common bond of love in between themselves, there shall be none in the house where the daughter goes who can maintain that affectionate regard. There shall be, on the contrary, persons who will incite and thus pave way for litigation. I don't at all follow why we should take recourse to a thing having full consciousness of its being pregnant with possibilities of disruption of our social structure.

Likewise I would like to say something as regards the the Hindu joint family. We have recognised to set up co-operative societies and invite people's co-operation to spread this idea in the country. Why

then we are anxious to do away with the joint family system which is based on principle of co-operation. Keeping these two things in view there should be some such provision which can meet them both. In my opinion the reason for restlessness prevailing in some sections of the public and the provision that makes this measure controversial is mainly the issue of succession. If somehow we can meet the point of succession we can then proceed with its proper consideration and pass this Code unanimously. Taking no more time of the House, I will submit only that the Members who are likely to be appointed to the Committee should conduct their deliberations keeping this difficulty in view, not because a daughter should get no share in her father's property but to see that it does not disrupt our social system any way.

There is another point of controversy that strikes me. I may be wrong but so far as I have pondered, it seeems to me that taking an individual case of a son and a daughter, whereas a son is entitled to a share in the property of his parents only according to this Bill, a daughter enjoys a share in her father-in-law's property as well. I do not see any reason for this disparity. I fail to understand why such a provision has been made therein. The Hon. the Minister of Law may kindly throw some light on this aspect while replying to the Debate as to what consideration has led for the inclusion of such a thing.

Taking no more time of the House, I will submit only this much.

* **Shri Krishna Chandra Sharma** (U. P. : General): Sir, I have been very attentively listening to the debate. I have very great respect for the views expressed by my elders, particularly Pandit Thakur das Bhargava and Pandit Lakshmi Kanta Maitra. I have been looking for support for their contention that the Hindu Code Bill interferes with our culture and civilisation and if it is placed on the Statute Book the whole fabric of our society will go down and there would be undue and improper interference with our religious institutions and our cultural background. To my misfortune I have not been able to find anything of that sort. There is nothing with regard to this Code which interferes with our religion in any matter whatsoever. Whether the Code is good or bad is another question. But the proposed Bill has nothing whatever to do with Hindu religion and as such if it is passed the Hindu religion remains as good or as bad as it is without it.

*C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 498-502.

The second is the question of culture. The question is whether a house belongs to A or B, it may belong to Ramkumar and Krishnakumar, and if you just include Vimalkumari also, that is not going to affect Hindu culture. I want my friends before interrupting me, to understand the basis of culture. No culture is culture unless it has any function with a view to the development and evolution of society. If culture is merely static, then it cannot last, and if Hindu culture had been static, it would never have been stable, and it would not have lasted so long. Culture must have some function connected with evolution, it must have something to do with a society as it is evolving. Let us understand this before crying that culture is in danger. Culture and religion and the present Hindu society or Hindu law and even the Hindu religion are not the same as they were in the Vedic times. Do you want us to believe that the Greeks came here and the Romans came here, their penetrations were there and yet we remained blindly static ? Had we no heart, no mind and no receptivity whatsoever ? Because of the receptivity and ability to evolve, the greatness has been preserved; if we had not this receptivity, we would not have existed so long. That is my reply. So I say, let us take a rational course, take an intelligent view of the thing, a scientific view of the thing. Hindu law as it was in the *Smriti* was only a codification of the customs and usages prevailing before the *Smriti* writers came. There are lots of *Smritis* and they differ on various points and on the same point different writers have different views. And the Privy Council has said that even if they differ from each other, their commentary is to be accepted, not because it is based on the *Smriti,* not because it is based on truth, not because it has come down from the Vedas, but because if it is recorded in the *Smriti,* it must have been the usage or custom of the time before the *Smriti.* According to the view of Hindu law, a custom overrides the written law, the written text of law. Now, taking this view, I ask you seriously whether this is any question of religion, whether it is a question of culture, whether Hindu society will fall down by including Vimala along with Ramkumar and Krishnakumar ? Therefore, do not bring in religion in this question. Do not bring in culture, do not bring in other things and say that Hindu society will fall down. I say Hindu society has never been so weak, Hindu culture has never been so weak, nor Hindu religion, that it will fall down, if this Act or that Act is passed. It is too strong for that.

4 P.M.

And then again, it is not our claim alone that we have come from God. There have been six great civilisations and every great civilisation claims that it has come from God. The Muslims say it, the Christians

say it, the Japanese said "I am the son of God". The Chinese Emperor wrote in 1559 to George III a letter that the Chinese potentate comes from God and his territory shall have nothing to do with English commerce or be tainted by foreigners. But forty-nine years later there was a war by the Englishman upon China and the former accepted the opium dealer. Where had the land of the son of God gone then ? Where was that son of God when there was the cannon mouth of the Englishman ? Even the Englishman claims such things, that it is the whiteman's burden that he has been sent to Africa and India to civilize other human beings; that he has been destined to do so. But such claims are false, as false as it is for us to claim that ours is the only monopoly of truth. I am a Hindu and I am a Brahmin, and I am proud of being a Hindu and Brahmin, but I do not like to claim that the truth is my own monopoly, that the truth came to my ancestors and not to anybody else. If God gave the truth only to my ancestors and to nobody else, then it was unjust, and for the matter of that also foolish to have created other people on this earth. So my only request is—and I make it with all the humility and respect of a Hindu child for the elders—please do not bring in religion, do not count upon culture. Do not say Hindu society will come down. But please accept it on the basis of an intelligent view, a common-sense view, a scientific view, of law as prevailing in the modern world. The law of every country is the outcome and result of the economic and social conditions of the country as well as the expression of its intellectual capacity for dealing with those conditions.

Now I come to the next point. We have been for a long time separated from the world as such. As I said there were six civilisations and the Chinese Potentate, the Japanese Emperor, the English King, the Czar of Russia, Babar of India all of them claimed that they came from God, all because. . . .

Pandit Lakshmi Kanta Maitra : To what particular clause of the Hindu Code is my Hon. friend referring ?

Shri Krishna Chandra Sharma : I am referring to your remarks. Well, as I was saying, they all said they were supreme and they were the most mighty, and that was because they could not understand other people and they had no knowledge of them. Therefore they said, theirs was the best religion. But now with the aeroplanes, through the ships, through literature and the printing press and publication, you have come into contact with all the people of the world. You know other

people and you understand them. You are influenced by them. Look at the desk of your child and there you will find the works of Bernard Shaw and Shakespeare. You do not find *ganga lehri* there. But you don't think the child is not a Hindu because he has only Bernard Shaw and Shakespeare and Pearl Buck on his table. So every thought and action affect and influence all the countries of the world. You cannot have any law whatsoever which is divorced from the influence of others, it has to be dynamic and then it will help the people to a great future. Divorced from that, separated from that, they are weak. So let us have the law on the scientific basis. In times past there might have been prejudices and there might have been different customs, and there might have been any other thing. But today religion is a matter of scientific study. You cannot say that everything you believe is religion. Nobody is going to accept it. Religion is that which takes man from human stage, from the comprehensive human life to the region of Godhood and in raising humanity from humanity to Divinity, there are certain accepted principles from which you cannot escape. So in this twentieth century, neither is everything religion nor is everything culture nor everything the basis of society. There are certain well accepted principles, accepted by the world at large, by the jurists, by the religious teachers and all the great men of the world as the basis of society, as the basis of culture and as the basis religion. Everything that you speak and believe is neither religion, nor culture nor the basis of society.

My friend asked me to what I was referring. In Mulla's Hindu Law the first page deals with castes. It says there are four castes in Hindu Society. The second paragraph deals with whether *Kayasthas* are *Sudras.* The third paragraph deals with the question whether *Marathas* are *Sudras* or *Rajputs.* I put it to you in all humility : Is there anything of culture or religion in it ? Religion takes from the universal love to the Divine bliss and culture means light and sweetness. The division of a people into castes is no culture and much less has it anything to do with religion.

An Honourable Member : Only agriculture.

Shri Krishna Chandra Sharma : Agriculture will give you food; your view is a thing that will bring you down.

Now, I shall put to you the sources of Hindu Law. I think my hon. friend is a lawyer and he will appreciate it. The sources of Hindu Law are, the *Shrutis,* the *Smritis,* customs having the force of law,

commentaries, and then the judicial decisions of the Privy Council and the High Courts. So far as the *Shrutis* are concerned, nothing is known about them. I have quoted Jayaswal who is the greatest authority on ancient polity and he is of the view that what is stated in the *Smritis* is only a codification of the custom and usage prevailing when the *Smritis* came into existance. The *Smritis,* as I said, differ on the same point. The commentators are accepted; but they are accepted as authority not because they tell you what the law was, but because they tell you something that must have been in existence. According to the principles of Hindu Law, custom and usage override the written text of the law, and they are to be accepted. Then comes the case law of the Privy Council and of the High Courts. How was this case law made ? Up to 1868, the condition was this. The Hindu Law was administered by English judges with the assistance of Hindu Pundits. The institution of Pundits as official referees of the courts was abolished in the year 1868. Your case law is the result of the English man's decision with the help of the Pundits. Now, I tell you, when the country is ruled by an aggressor, when the country is ruled by an invader, no self-respecting man much less a learned man, will sit beside him. Therefore, whatever class of Pundits were called, they were demoralised creatures; they were not representative of Hindus. Do you mean to say that you do not want to change the Hindu Law because Hindu Law is something sacred ? What is that Hindu Law ? Decisions of Englishmen given with the help of or at the suggestion of demoralised creatures. That is your Hindu Law. What is the sacredness behind it ? That is my point. You judge this present law on its own merits; judge the present code according to principles of jurisprudence. In accordance with principles a law is judged as necessary and good.

Coming to this Code, the first thing that it deals with is marriage and divorce. If you go through the different small Acts passed during the last two or three years, you will find that this is a mere codification and nothing new. You can have the sacramental marriage; you can have the civil marriage. You find Hindus marrying in different castes, even beyond the Hindu fold and they remain Hindu all right; you do not say they are outcastes. Therefore, what is prevailing, what is a fact already, you take as the law. I do not think you are changing anything. With regard to judicial separation and dissolution of marriage, look at the grounds : either party to the marriage was impotent, the

husband is keeping a woman or a concubine, the other party has ceased to be a Hindu, either party is incurably of unsound mind, either party is suffering from a virulent and incurable form of leprosy. Now, I put you a simple question. Is there anything in any law, in any text of Hindu *Shrutis or Smritis* which bar these conditions ? I have been looking into the Manu Smriti and I have found nothing repugnant to this. If my hon. friends find anything, they may bring an amendment. I am not against the *Smritis* and I am only proud of them. I have gone through the texts; I have not been able to find anything in them repugnant to this. If these conditions are in accord with notions of social justice as it is prevalent, I see no reason why you should not accept them. Are you an enemy of women? Are you an enemy of your mother and daughter ? Our mother is a respected being and our daughter is part of our life and blood. Is that not so ? Why then do you raise the cry that this is something which will bring down Hindustan and that the Hindu society will be crushed to pieces. There is nothing in religion, there is nothing in culture, there is nothing on the basis of Hindu society that is against these conditions and repugnant to them.

Take the case of adoption. My own feeling is that at this stage of evolution of our society, it is unnecessary and it has no meaning. There is a text in Manu on which this adoption is based : that a son-less father has no region in Heaven. The basis of that text was this. At that time, the Aryans were facing the aboriginal tribes or some people who were non-Aryans. Therefore, they naturally wanted their number to grow. They put it this way. A Hindu has three *"Rinas"*: *Rina* to God, *Rina* to the *Rishis* and *Rina* to the *Pitras,* that is the race. That is, to carry on the thread of the race. To carry on the thread of the Race was necessary at the time Manu wrote the *Smritis.* It is not necessary today. Today the cry is not that we have not got children; on the other hand, the cry is that we have not got food and cloth. The fewer we are, the more of these things we will have. Therefore, at this stage, I do not see any reason for adoption. As to going to Heavens, the meaning behind the oblations and all these things was to keep up a spirit of charity in our society. Human society has grown so well and so organised that there is enough scope for charity and social service and generosity in this world rather than giving something to our ancestors who have gone beyond this world. It is better to work in this wide world. That is an institution which has no meaning. The meaning that it had has no application in the present

day society. So far as secular purposes are concerned, that if a son is adopted he will serve the old man or old woman, I think it is of no use. Today, there are so many sick homes, hospitals and other homes. If you have got no property, it is useless to adopt a child and nobody is going to serve you simply because you have adopted him. If you have got property, there are enough institutions to help you in old age. My contention is that this institution of adoption in the present state of our society has no meaning whatsoever.

Regarding minors and guardians, I don't think it has made any departure from the Hindu Law as it is. Regarding law of Succession, I am sorry I have not been able to see much about Succession and I cant't say with confidence whether the present system of Succession is right or wrong. One thing I will say *viz.*, there is nothing wrong in principle to make a daughter co-heir with the son because under section 3 of the Women's Property Act, 1937, the mother gets a share along with the son. What objection there is on earth to a daughter inheriting along with the brother ? If mother can inherit along with son, there is no reason why the daughter should not inherit with the brother. Pandit Bhargava raised the objection that the sons-in-law will come and create trouble in the house. If two brothers do not create trouble why should the son-in-law create troubles. Go to Cannaught place and you will find that the fate of the husband is to take the coat of the wife behind and pay the bill; and so how can a husband create trouble when the wife.does not want it.

An Honourable Member : That is in Northern India.

Shri Krishna Chandra Sharma : That is the evolution of man. The evolution of humanity is like that. Where are your moustaches ? It is an ordinary biological principle that the female cells were developed and separated later and woman was better evolved. She is fairer, more tender and more beautiful. It is the way of progress to go to finer and more beautiful life. If you are otherwise inclined, I think you are less than human.

Then I come to the joint Hindu Family. I have looked into authorities on this point and all great authorities agree that Hindu Custom came into existence when the state of Society was pastural. For that it was necessary to have Joint Hindu Family system. At present there are a number of laws by which we have done away with the Joint Hindu Family property conception. This was made at a time when there was not much trade and commerce. A farmer looks to the cow not as

something worth 100/- but as something—a living thing associated with him in life—something sacred. So he takes the cow as it is and would not like to get the money from the son if the son goes away from the family because the cow is something sacred—that is how we regard the cow as Mother cow.

Pandit Lakshmi Kanta Maitra : Is there any father cow ?

Shri Krishna Chandra Sharma : Times have now changed and therefore that question of Joint Hindu Family does not hold good and is not to be regarded as so essential and therefore sacred as it was when Aryan society was first established in India and these customs came into existence.

The second point is that this is not applicable to agricultural lands. So far as agricultural lands are concerned, new acts are coming into existence and succession in those would go on the same basis.

With these words, I commend this Bill for the acceptance of this House.

*__Shri B. M. Gupte__ (Bombay : General): Sir, I rise to accord qualified support to the measure before this house. This does not mean that I am opposed to many of the reforms that are proposed here. On the contrary I am prepared to say that they are in the right direction subject to certain modifications and adjustments. Adjustments are necessary. I will give only one example. The abolition of customary divorce is bound to entail much hardship to rural population of Bombay province because among the population there the practice of divorce is widely prevalent. In Bombay we have a Divorce Act but even that Act makes an exception of Customary divorce. I therefore say that certain adjustments are necessary. The provisions with regard to divorce, marriage and maintenance and minority—these may be proceeded with and made into law. I have no objection about them but I can't lend my support to the enactment of the provisions embodied in parts 5, 6 and 7. They make fundamental changes. In fact they unsettle the entire law of inheritance of the Hindu Community. therefore the question arises whether this is the time quite opportune for such general unsettlement. We are in the midst of a political and economic situation which is characterised by unrest, turmoil, misery and disruption and therefore the question is whether we should complicate the situation still further by introducing revolutionary changes which affect the entire social structure of the country. Our Prime Minister often insists, and rightly insists, that in this emergency first things should come first and this is not the time for things which

*C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 502-504.

bring disruption. If we apply this test to this measure, what would be the result ? I ask, are these so pressing, that we must face the risk of intensifying the complexity of the situation which is already difficult enough ? The answer is obvious. The Hindu Law has been in existence for years and if there is to be a revision of it or its codification there is no urgency at the present juncture. This is not the opportune time for such a general unsettlement of the existing law.

It is our well known experience that social legislation which is in advance of public opinion defeats itself. In this I include not only the vocal urban section of the population but also the teeming millions in the villages. We have to see whether this legislation is in advance of public opinion. We have the experience of the Sarda Act. In spite of its strict provisions the law became a dead letter in its enforcement. In this case it will not become a mere dead letter. The enactment of the provisions laid down in parts V, VI and VII will bring about far more mischievous results than being a mere dead letter.

In the villages there are the *goondas* who because of their detailed knowledge of the law try to exploit the ignorance of the villagers and dupe them into protracted litigation. This evil is already rampant. The law of succession or survivorship, owing to long usage and familiarity is already known to the villagers. The result will be that we shall be affording one more source for the village *goondas* to exploit the ignorance of the villagers. I therefore want to emphasise that though I am not opposed to reform, this is not the time to introduce a measure like this.

Whatever decision we may take here or in the provincial capitals in the present condition of illiteracy of the masses, it is difficult to carry such legislations to the villager. We have already the experience of the Grow More Food Campaign. In my province the Government is offering numberous concessions and facilities but the villager does not know them at all. What will be the result of this law ? The village *goonda* will be able to exploit the ignorance of the villager in this matter.

In one respect the situation in the villages will be worse than that in the urban area. According to the present constitutional position this law will not affect agricultural land. It will mean that there will be two sets of heirs for the property of the deceased argriculturist. His agricultural land will go to one set of heirs, while the rest of his property will go to another set of heirs. This is bound to make confusion worse confounded. We are enacting this legislation with a view to secure

uniformity but instead of uniformity and simplicity there will be complexity and confusion. To avoid such confusion it would be better that we wait till the new constitution is ushered in. Let us not be in a hurry. Personally I feel that this measure can be introduced and pursued after one or two general elections have taken place. Those general elections are bound to quicken the political consciousness of the villager and bring him into more effective contract with the working of the legislature. He will then be in a better position to influence legislation which vitally affects his interests. Therefore I submit that till such time comes, till there is some quickening of political consciousness among people, let us not thrust the legislation upon them.

I finally appeal to our enthusiastic friends who are the ardent champions of this legislation that by our over-enthusiasm let us not defeat our own object.

* **Shri A. Karunakara Menon** (Madras: General) : Sir, I rise to support this Bill, so far as it goes, with all my heart. It will no doubt go a great way to consolidate the Hindu society. The Hindu law as it exists today is only a conglomeration of several systems of law. We have declared in our Constitution that it shall be our aim to frame a uniform civil code applying to the whole territory of India. This Hindu Code will go a great way to assist in the evolution of this uniform code of law. I wish some Muslim friends introduce a law to codify the Mohammendan law also. The Christians have already a codified law. After these three codified laws are brought into existence it will be easy to pick out the uniform provisions of these three codes and try to accomplish the object that we have aimed at under the Constitution. This Bill is also welcome inasmuch as it will extend the rights of women.

But I have some complaints to make. This law is not as progressive as it ought to be as the people wish it to be. It is far behind in several respects the *Marumakhattayam* law that exists in my part of the country. We should not be dragged down from the position we are in at present. If amendments could be introduced in the Bill and if it could be made possible for us also to make use of the Bill, none would be more happy than us.

The provisions of the Bill as they stand at present have been conceived at from a patriarchal point of view. The provisions of the matriarchal system of law, wherever they are progressive, could be

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 504-506.

introduced into this Bill and that point of view has not been taken into consideration at all. It might be pointed out that the original Bill as drafted in 1947 excluded the *Marumakkattayam* and the *Alia Santhanam* law from the operation of all the important branches of law covered by it. I will point out why this Bill is not sufficiently progressive and why it should be made more progressive.

Marriage under *Marumakkattayam* law is a purely mundane affair. There is no religion in it. There is no sapindaship or sacrament in it. This Hindu Code Bill recognises only two kinds of marriage— sacramental marriage and civil marriage. Civil marriage is common and we have no objection to it. We are prepared to abide by provisions relating to it.

That the authors of the Code were under a misapprehension that even the Marumakkattayam marriages were sacramental marriages is clear from a reading of clause 51 of the Bill where they say that even the Malbar marriages are sacramental. That is the basis on which they have framed that clause. In Malbar marriage has nothing to do with religion. Clause 51 says:

> "Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1932) to obtain the dissolution of a sacramental marriage, whether solemnized before or after the commencement of this Code."

There is another direction in which we would like to get an amendment of this Bill in so far as we are concerned. Our law allows us to marry our father's niece or our maternal uncle's daughter. In fact many of us consider it a privilege to marry our uncle's daughter or our father's niece. But this is interdicted by the provisions relating to sapindaship and prohibited relationship. This encroachment on our right is not likely to be viewed with favour by the people of my part of the country.

In regard to judicial separation or restitution of conjugal rights, there are no provisions at all in our law. Either a marriage exists or it is got rid of by means of a divorce. There is no middle course. The provision for divorce is very simple. Either of the aggrieved parties goes to the nearest court of civil jurisdiction and puts in a petition with twelve annas stamp on it praying that "for such and such reasons we are not able to pull on together and therefore a divorce may be granted". For a period of six months that petition is kept pending. Perhaps the authors of the law wished to see whether a reconciliation was possible within this period of six months. After this period of

six months, if nothing took place divorce is automatically granted. This provision is simple and from clause 51 of the Bill it is clear that it has attracted the attention of the framers of the Bill because this provision for divorce is found retained in the Bill. But I do not know why the benefit of this provision is not extended to all other Hindus.

The provision for dissolution of marriage has infuriated some of the members of this House. Even though the provision for divorce has been in existence in Malabar since 1932, I believe, not even a dozen divorces would have actually taken place. This proves the truth of the statement made by a learned author—I mean Bertrand Rusel—that "the easiest divorce laws by no means produce the greatest number of divorces ; wherever there is divorce, adultery is scarce and morality is higher".

Coming to adoption, the provisions contained in this Bill are very unsatisfactory when compared to what prevail in our part of the country.

According to this Bill, adoption is a religious matter, but among the *Marumakkattayam* people it is a purely secular matter. Under the Hindu Code only a male or his widow could adopt a person, but according to our law any person, whether male or female, could adopt a person. Whereas only a male could be adopted under Hindu Law, males or females could be adopted under our law. Whereas only one person could be adopted under Hindu Law, we can adopt one person, two persons or even one whole family, at the time of extinction of our family or as heirs to our property. So there is a lot of difference between the Hindu Law and the *Marumakkattayam* Law in this respect. The reason why these things have not been taken into consideration in framing the Bill is, according to me, that the whole perspective has been entirely patriarchal and not matriarchal also. If that point of view also had been taken into consideration then many of these differences could have been resolved or reduced.

In regard to joint family property, the substitution of tenancy-in-common for joint tenancy is one of the most important features in the Bill. I welcome this provision. But this part of the law again has been framed from the patriarchal point of view only. Read any clause under Part V—I am not going to trouble the House but I only wish to bring it to the notice of the Hon. the Law Minister—read any clause in part V and you will find that it is inapplicable to the *Marumakkattayam* people, though the Hindu Code Bill is intended to apply to them also.

Clauses 86, 87 and 88 will show that none of them could be made applicable for the tenancy-in-common being introduced into the joint families that exist in Malabar.

With respect to inheritance, I do not know why mother should not be made an heir along with son and daughter. Suppose a man dies—suppose I die. My natural love and affection induce me to see my mother who has brought me up and who has taken interest in me all through my life, an heir to my property. Here what I find is that the mother has been omitted in Clause I.

My second complaint is why the son of a predeceased son or the son of a predeceased son's son ought to be introduced in Class I. He ought to come in Class II. It is revolting to us to make them preferential heirs in Class I. If you ask anyone in Malabar as to whether he would like his property to go to his son's predeceased son's son, or his son's son even, or to his sister or sister's children, he will certainly say that even in preference to his brother it should go to his sister and sister's children. So I say that the rank given to sister and her children in Class II of the Seventh Schedule ought to be raised than what has been given there. Sister and sister's children come very low; in Schedule VII, they come only after son's daughter's son, son's son's daughter, son's daughter's daughter. It is after all these persons that we find even brother and sister appearing as heirs. I do not know why promotion ought not to be given to brother and sister who were born of the same womb. Natural love and affection should certainly induce us to give brother and sister a higher rank than what has been given to them under the provisions relating to inheriance.

[At this stage Mr. Deputy Speaker vacated the Chair, which was then occupied by Shrimati G. Durgabai (one of the Panel of Chairmen)].

Looking at the question from all these points of view, it will be seen that the whole Bill has been locked at only from the law that is prevailing in the other parts of the country than Malabar—which no doubt is certainly followed by the largest number of people—but the matriarchal system of law has not at all been taken into consideration in framing this Bill. Therefore I feel that this Bill is not sufficiently progressive either with respect to the rights of women, which we all desire so much to be given to them, or from the general point of view.

We are very anxious to be brought within the scope of this Bill. We do want uniformity. I am one of those who wish, and the people

of my part of the country also want to see, that there is one uniform law existing for all the Hindus in the country. But at the same time it should not be made so revolting or made impossible for my people to follow the law, or even if they do so to do it with a certain amount of reluctance. It ought to be made attractive. My submission is that in framing the law the matriarchal system of law has also to be taken into consideration. I submit that proper amendments might be introduced to attract us also to come within the scope of the Bill. If for any reason the two systems are so divergent that it is impossible to introduce amendments in the Bill so as to attract us also within the scope of the Bill, my appeal to the House is that we may be left alone, that we may be allowed to follow our own law which stands on a higher footing of love and affection than the Hindu Code Bill that has now been introduced in this House. According to me this Hindu Code Bill is not a secular measure, it is not a rational measure ; religion still pervades throughout the Bill. The Bill ought to be entirely a rational one. I would have had no objection if the whole Bill had been framed from a natural outlook, an outlook entirely divorced from religion. If a Bill like that is introduced, our people would be too glad to follow it. What we notice is that the Bill as it is framed now is religious still to a high degree; though it has been watered down, it is not yet sufficiently secular. I don't know why in marriage, adoption and inheritance, religion ought to interevene, why the provisions relating to them ought not to be made more secular as they prevail today in our part of the country. There is no reason why we who follow a system which has nothing to do in all these mundane matters with religion, should be roped into this Bill in which religion plays a prominent part.

***Mr. Chairman :** There are only ten minutes left. I want to know if any of the Members will finish his speech in ten minutes.

Some Honourable Members *rose—*

Shri Sita Ram S. Jajoo (Madhya Bharat): Madam, I will finish my speech within ten minutes.

At the outset I want to make it clear that I am wholeheartedly in support of the present Hindu Code Bill. It is with a hesitant heart that I am standing here because I feel that almost all the Members belonging to the older generation were speaking against the Hindu Code Bill. I don't challange their hearts, but so far as the Hindu Code Bill is concerned their hearts seem to be older or staler.

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 506-508.

Shri M. Tirumala Rao : May I say that ladies of the older generation also are supporting you ?

Shri Sita Ram S. Jajoo : Yes, because they are progressive, because they want to progress. In the words of my friend Mr. Krishna Chandra Sharma, they are more progressive and going forward whereas the men are going backward. Any way, I am concerned with the Hindu Code Bill as it stands today.

Madam, I would not have spoken but for the fact that I can represent the views of the younger generation here, and I can confidently say that the younger generation in the country stands by the Hindu Code. Much ado has been made about the fact that this Bill has not been circulated for public opinion in the Indian States. I want to say that there have been many Bills which we have passed in this House, but at that time nobody raised his little finger and said that those Bills were not circulated for eliciting public opinion in the Indian States.

Some Honourable Members : But this is such a controversial Bill.

Shri Sita Ram S. Jajoo : There have been so many controversial Bills. The question of Sirohi was most controversial but the States people were not consulted on it.

Shri Gokulbhai Daulatram Bhatt (Bombay States): Madam, there was no Bill connected with Sirohi.

Mr. Chairman : May I request hon. Members to allow the speaker to go on uniterrupted ?

Sardar Hukam Singh : Is it not for the elders to correct if the younger generation goes astray ?

Shri Sita Ram S. Jajoo : They are definitely in their rigits to control and guide the younger generation, but that must be towards progress, it should not be a retrogade step.

An Honourable Member : Our experience extends upto 80 years.

Shri Sita Ram S. Jajoo : The experience of 80 years may be there ; but the experience of the Father of the Nation, Mahatma Gandhi, is also there. There are volumes of books containing the articles by him from time to time in favour of the elevation of the Hindu women. And so far as the Hindu Code is concerned, I have heard from many of the staunch opponents that they won't mind if the whole Code is passed excepting the provision regarding inheritance and the sharing with daughters and sisters. It has been opposed mostly by the community, to which I also belong, the Marwari community. But I

say that the Marwari youths are for the Hindu Code Bill. If we say that the older people are there and their experience is there, Mahatma Gandhi in his autobiography has written that it is a most pitiable sight to see the Hindu wife ....

Pandit Mukut Bihari Lal Bhargava : You can't exploit Mahatma Gandhi's name.

Shri Sita Ram S. Jajoo : Perhaps you might have exploited his name much more than what I have done. I have just started my life and I had no opportunity of swearing by the Mahatma's name whereas among people who are old and who have got grey hair there might be some who might have exploited his name hundreds of times.

Madam, Mahatma Gandhi writes that so far as the position of Hindu wives is concerned, it is most pitiable. He says that if the master is annoyed with a servant, the servant may leave his master, if one is annoyed with one's father he can't demand partition, if a father is annoyed with his son he can ask him to get out, but so far as the Hindu wives are concerned they cannot go anywhere. If that was the case with Kasturba at the hands of the Mahatma, what would be the position of women at the hands of ordinary human beings like us ?

So far as the Constitution is concerned, we have agreed that there is equality of sex, but here we are afraid of granting that equality to our women folk, to our sisters and daughters. You can adopt a boy from a family simply because he also happens to have the same *Gotra* or the same surname, but you are not prepared to tolerate your own daughter or your blood sister simply because she happens to be a female. That is the position.

Much ado has been made about the Bill by saying that it is an insult on the Hindu religion. I want to ask this of my friends. The Hindu religion is very adjusting and accommodating. It has adopted itself to changing circumstances from times immemorial. The very fact that there are 137 or 138 *Smritis* is evident to this statement. If there was a fixed law and no change suggested or expected in the Hindu law, then why are there 138 *Smritis ?* And why we cannot have one more *Smriti,* codify and have a new Hindu law ? We can have in it all the good things of those *Smritis* together with all the good things which the modern times and the scientific developments and the social progress demand. What is the harm if we codify all these into one law ? The very word *Smriti* indicates whatever is written from memory, the word *Shruti* indicates whatever is heard and written.

It is nowhere stated that they were written by a particular *Rishi* or a particualr *Muni*. So, I don't think there should be any hesitation in having this Code nor should anybody feel that his conscience will be killed if this Hindu Code is enacted. We have always been speaking from the political platform about freedom. Political freedom has been achieved. We have achieved independence but we have also to see . that the social evolution of the country also takes place. If we want the social order to change, I say this is the time for it. We have to prove it by our actions, not by words. We must see that the whole social order is changed. As regards reform, I may say that even the late Raja Ram Mohan Roy had to face opposition, many other reformers had to meet with opposition, some of them died an unnatural death at the hands of their opponents whom they wanted to help, whom they wanted to elevate and to whom they wanted to bring salvation. Here we have got our leaders who are certainly with us. After the Prime minister's speech on the opening day of the session, I don't think there is anything for arguing here or for fighting over this issue when he said that he was for the greatest common measure of agreement if it could be arrived at. If we are prepared to have a compromise with others then I feel this will not become a progressive measure, it will lose its charm. But still I have more faith in the wisdom of our Prime Minister. I feel he is much more wise than I can be or my young friends can be. I have faith in him. If he wants compromise, or if the Government wants compromise, let there be compromise, but so far as young people are concerned, we do not like the compromise. But we certainly have faith in our leaders and we shall obey their commands.

Pandit Lakshmi Kanta Maitra : But none of them are here.

Shri Sita Ram S. Jajoo : If they are not here, the Hon. Dr. Ambedkar is here. He is the sponsor of the Bill and he is doing it on behalf of the Government. It is no use cursing this Government. After all, if we go into the history of this Bill, we will see that it was brought by our predecessor Government .... *(Interruption).*

Madam, I would like to speak for about ten minutes more, because there have been interruptions. If you so desire, I may continue tomorrow. I will not take more than ten minutes.

Mr. Chairman : The hon. Member is requested to close his speech, because he has assured me that he will take only ten minutes.

Shri Sita Ram S. Jajoo : But you will appreciate my difficulty, Madam. I have been interrupted so much. I would like to speak for ten minutes more tomorrow, if you do not mind.

Mr. Chairman : May I know whether the hon. Member can finish his speech within three minutes more. I will give him minutes three now.

Shri Sita Ram S. Jajoo : I know, Madam, I have given an assurance. If you wish, I may sit down just now. But I thank you for giving me three minutes more.

Now, I was saying that Dr. Ambedkar is here. He will certainly convey our views. He is in charge of the Bill. It is no use cursing and blaming the present Government. After all, if we see the history of this Bill, this Bill was brought by our predecessor Government—a foreign government. At that time, we did not have the guts to fight it. Whenever social measures were brought forward by the foreign government ....

An Honourable Member : Don't worry about history.

Shri Sita Ram S. Jajoo : I have to look into the history certainly, but let me proceed with my speech just now. When the British Government brought certain measures which affected the Hindu law, we accepted them at that time, because they did not touch the purses of the moneyed people—the capitalists. Here we feel the pinch, because it touches our pockets. We male members of this House are in a huge majority. I do not wish that the tyranny of the majority may be imposed on the minority, the female members of this House. The ladies in the country in general are illiterate; so we should not exploit them. A big tirade of propaganda is being carried on that this Bill aims only at one thing and that thing is divorce. All ladies are persuaded or dissuaded or influenced or canvassed by telling them that their husbands are going to divorce them after the Hindu Code is passed. This kind of misinterpretation of the provisions of the Hindu Code is going on. I want to tell all these people that there will hardly be a single man who would like to divorce unnecessarily ; similarly, there would hardly be a single Hindu wife who would like to divorce unnecessarily. There is enough good reason and sense in the courts, and the judiciary will definitely look into the whole case and see that justice is meted out. This is all I have to say.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Tuesday, the 13th December, 1949.

HINDU CODE—*contd.*

*__Mr. Deputy Speaker :__ The House will now proceed with the further consideration of the Bill to amend and codify certain branches of Hindu law.

Shri Alladi Krishnaswami Ayyar (Madras : General): Sir, before dealing with the different aspects of the Bill as it emerged from the Select Committee, I should like with your leave to make a few general observations. I may at once say that I do not belong to the school which is against any legislative interference or change in matters of Hindu Law. Law by its very nature cannot be static; it must keep pace with the progresive tendencies of the age, if it is to be an instrument and measure of social progress. Our ancients were quite alive to this function of law in society. The *Smritis* as well as the great commentaries on the *Smritis,* bear eloquent testimony to this function of law in society and the need for changes from time to time. The commentaries which are treated as authoritative interpretations of law in different parts of the country merely give concrete expression to the social tendencies at work at a given time, but in the modern age with duly constituted Legislatures functioning, no jurist counsel can effect a change in the law by a mere process of interpretation. This function to some extent but within a limited sphere has been discharged by the Courts, the highest tribunals in India and the Judicial Committee of the Privy Council, during the last one hundred years or so. It is not, however, the normal function of Courts to effect a change in the law but only to interpret the law though in the process of interpretation it may effect imperceptible changes by distinguishing or extracting principles from previous decisions or from Hindu law texts.

But by its very nature, judicial function is restricted in its operation. It cannot be gainsaid that there is also a danger in the Judge consciously or unconsciously assuming the role of a legislator. A particular Judge or a Bench might approach the consideration of a question from a conservative or orthodox point of view, another Judge might utilise his judicial function for any pet theme of social reform. The judgments of the highest tribunals in this country as well as those of the Judicial Committee of the Privy Council during its long association with India, bear witness to the above statement. At the same time, there is no gainsaying the fact that the decisions of Courts to a large extent have prepared the ground for legislative intervention. While this need for

* C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 510-19.

legislative intervention is apparent, this Assembly in undertaking any legislation of this kind cannot altogether ignore certain rooted conceptions in regard to marriage, family law and rights of succession. Change is inevitable and is part of the organic law of society, but change does not mean striking at the roots or foundations of society.

Bearing all these aspects of law reform in mind, I should like this House to approach the consideration of this Bill. There is no subject in which every man and woman in this country is interested more than the Bill now under consideration by the House. That makes it all the more incumbent upon each one of us, however highly circumstanced or lowly circumstanced, to tolerate difference of views and to bring to bear a cool and dispassionate judgment in the larger interests of the wellbeing of the people of this country. In that sense and to that extent this cannot be treated purely as a Party measure or as a matter of confidence.

First, with your leave, Sir, I shall take the Chapter relating to marriage and divorce. While dealing with this Chapter, it is well to remember that already great inroads have been made into the marriage law by the various Acts of the Indian Legislature. The latest of such Acts was the Hindu Marriage (Disabilities Removal) Act of 1946 (Act XXVIII of 1946) by which it has been enacted that a marriage shall not be invalid by reason only of the fact that the parties thereto belong to the same *Gotra* or *Pravara* or belong to different castes or subdivisions of castes. The Madras Legislature has recently made monogamy compulsory and some of the Provincial Legislatures have already made provisions for divorce. A change has also been made in regard to the law relating to the age of consent to marriage. If we approach the consideration of the Bill from this point of view, the changes effected in the Bill are by no means so revolutionary as they may seem as first sight. The substantial changes in the provisions of the original Bill as pointed out by some Members of the Select Committee relate to the incorporation of certain provisions relating to restitution of conjugal rights, judicial separation, alimony, custody of children, jurisdiction and procedure of Courts.

While on the provisions of the Bill, I should like to mention one important point. The distinction sought to be made between sacramental marriage and civil marriage is more apparent than real. It is difficult to follow the provisions of the Bill in this respect, because I find that in regard to divorce, in regard to restitution of conjugal rights,

in regard to right of maintenance and obligations of the marriage the provisions are exactly the same both in regard to what is termed "Civil Marriage" under the provisions of the Bill and what is termed "Sacramental Marriage". The Bill introduces a distinction between what is called "prohibited degrees" and other kinds of disqualifications in regard to sacramental marriage. In regard to sacramental marriage, provision is made that *sapinda* relationship as defined in the Bill will be a ground for disqualification, whereas in the case of what is called a "Civil Marriage" it is only prohibited degrees that are made a ground for the marriage not being effective. At the same time, I am unable to follow the metamorphosis provided for in the Bill that even if the parties go through a sacramental marriage, it is open to either of the spouses to convert it into what is called a "civil marriage" under the provisions of the Bill. If really this distinction serves any purpose at all is a point which may be considered by the Hon. the Law Minister before the final passing of the Bill.

There is no distinction in regard to the rights of offspring, rights of inheritance, the obligations between the spouses and in every other matter. The position is exactly the same in regard to a civil marriage as in regard to a sacramental. Possibly, the idea is to satisfy the sentiments of some parties by making some provision for what is called "sacramental marriage" ". If that is the real object, then you ought not to make a provision for an easy change of sacramental marriage into a civil marriage at a later stage. Either have the one or the other. If, for example, you want to draw a distinction between sacramental marriage and civil marriage, have it; let it be quite clear and definite : Normally, certain ceremonies are indispensable for sacramental marriage. Certain formalities need not be gone through in the case of what is called " civil marriage ". From the point of view of a pure lawyer, I fail to see any real distinction between a civil marriage and a sacramental marriage under the provisions of this Bill. I do not go to any root ideas of the Bill, but I merely place it for the consideration of the Hon. the Law Minister.

Then again with regard to prohibited degress of relationship, modern eugenics is against the idea of people related to one another marrying. At any rate, there is a large body of opinion in favour of this doctrine. Under those circumstances, are we advancing or are we retarding progress so far as this provision is concerned ? At least so far as this part is concerned, I think our ancients anticipated modern ideas in

prohibiting certain people from marrying. I ask you : why take retrograde step in the name of progress and in the name of advanced ideas and civilisation ? I certainly realise that there need not be any prohibition in regard to distant *sapinda* or people who have the same *pravara* or the same *gotra*. But that stands on a different footing altogether. Where there is near relationship, why relax the rule ? I have been recently reading in newspapers and periodicals a good deal of discussion as to the advisability of near relations marrying one another. This is one aspect which I know the Hon. the Law Minister, as a student of science and of history, will certainly consider. This is opposed to the religious sentiments of the people. If scientific ideas, if religious considerations, if sentiments of the people have all to be taken into consideration, then there is no point in relaxing that rule. It is not, of course, consistent with the well being of the society. If in the interests of the future generation, if in the interests of the well being of our people, if in the interests of the progress of the race, you must promote marriages between near relations, by all means do so. Let us take a bold stand ; let us take a clear stand ; let us take a determined stand in regard that matter. I do not want any shilly-shallying in regard to what may be regarded as a question of fundamental principle. Either adopt the ancient principle or adopt a more rational or modern principle according to your ideas. But personally, I would very much prefer the old rule being retained. Let me be quite clear. In regard to particular communities where, for example, certain customs have been prevalent in some parts of India, you have already provided for it in another clause. But the general rule should be to prohibit marriage between *sapindas*. In this respect, the move is not in the right direction.

12 NOON

With regard to the law of divorce, in trying to bring about a uniformity of law there is no point, as Sir Tek Chand has pointed out in his memo, in imposing special restrictions upon communities and classes of people among whom restrictions do not obtain at present. I know that in parts of South India divorce by mutual consent in the presence of the village headman or the Panchayat is still prevalent as in other parts of North India. After all, it looks as if divorce is to be the essence of the law of marriage according to a certain school. But must you think of divorce before you think of the marriage ? If that is the running idea and if you want to give encouragement or at any rate provide an easy divorce, why provide for law courts,

divorce courts, an appeal court with three judges sitting, etc. when the communities affected have got hardly enough to eat ? I should think that is not a move in the right direction. In so far as any divorce is permitted according to the custom of the community in particular castes, it should continue ; but in the interests of uniformity you need not make the divorce more expensive. It would certainly benefit my profession and I am not at all against it. But I know my hon. friend Dr. Ambedkar very well and I have no doubt he will consider all the aspects of the question before coming to a conclusion on this particular question.

In regard to judicial separation, I recall to mind a very interesting debate in the House of Lords some years ago in which Lord Birkenhead took part. Very eminent lawyers and some of the greatest jurists of the day took part in the debate. There was a certain section of the people who took a strong view to the effect that judicial separation is another name for legalising concubinage. I would rather prefer a clean case of divorce to this judicial separation continuing. If it is a question of providing maintenance, if it is a question of seeing that the obligations are discharged that the wife is not starved or that you do not discharge your marital obligation, while continuing to be man and wife, provision is made in the Bill in regard to that.

Why all these complicated provisions of the English law in regard to alimony, in regard to judicial separation, in regard to divorce and restitution of conjugal rights ? Is it necessary to have so many detailed and complicated provisions is a point which is worth consideration.

Pandit Lakshmi Kanta Maitra (West Bengal : General): They are necessary in the interests of the progress of the country.

Shri Alladi Krishnaswami Ayyar : I am not giving one view or the other in regard to that. You may have your decided views on that matter. But I have no decided views on the subject.

Therefore, I think we have to take the modern trends of thought into consideration and not merely go upon antiquated ideas prevailing in England. Even in England within the recent years there has been a great change of opinion in regard to marriage law, although every aspect of it has not found a place in the Statute Book of England. Therefore, instead of merely copying the English precedent let us see if it is possible to make any changes.

So far as the general principle of it is concerned, I do not think that the Bill is drastic at all in regard to divorce or other matter.

Whatever difficulties and complexities have arisen are due to a genuine attempt to harmonise the two opposing views—on the one hand the ancient idea that marriage cannot be easily severed and on the other the modern ideas which demand separation under certain circumstances. The problem now is how to bring about a synthesis between the two opposing views. Let us approach the consideration of this problem with a certain amount of coolness and with an attempt to understand one another. We cannot stop the current, whatever might be our views. I belong to a very conservative and very orthodox family. I am one of those who believe still in *Shradhas*. I attach considerable importance to my family home and I believe, to some extent, in the ancient view of life. But I cannot at the same time ignore the present day tendency. My sons may not be just like myself and my grandsons much less like myself. Under those circumstances, though my life is rooted in the past, to a very great extent I am in a position to appreciate modern tendency. Therefore, taking all these factors into consideration let us approach the consideration of this measure. If really you believe in sacramental marriage, this method of converting sacramental marriage easily into a civil marriage, somehow does not appeal to me. That is my view. Either have sacramental marriage or do not have it at all. Have particular grounds of divorce for sacramental marriage and particular grounds of divorce for civil marriage. Somehow I cannot reconcile myself to the idea of mixing up the two.

Now, I shall take up the chapter on adoption. The chapter on adoption does not call for any detailed consideration. While the main principle in regard to the law of adoption laid down by the judicial decisions bearing upon the subject have been kept in view, necessary changes have been effected as a consequence of changes in the law as to marriage between persons belonging to different castes. There is no point in conceding the rights of inheritance to the offspring of such marriages and retaining ancient rules as to the eligibility of a boy for adoption based upon the law of marriage as a condition precedent for the validity of adoption in particular castes and particular circumstances. The simple rule as to giving and receiving has accordingly been adopted for a valid adoption in the Bill. The property rights have been regulated with a view to avoid litigation between adoptive mother and the boy to be adopted. A provision has been inserted for preventing the divesting of estates which will have the effect of putting an end to interminable litigation which has been the special feature of law relating to adoption beginning from Bhuban Moyee's case. The law has also been simplified in regard to the need

for any authority to adopt as a condition for the validity of adoption following the main principles of Mayukha Law. On the whole, it may be claimed that there is everything in the chapter on adoption to commend it for the favourable considration of this House. The need for an express authority from the husband for the validity of adoption, the restriction of the scope and the terms of the authority conferred by the husband, the free consent of the nearest *sapindas* who are most interested in disputing the adoption and being a substitute for the authority of the husband and the relative claims of the senior and junior widow, the limits that ought to be placed upon the exercise of the power to adopt have been fruitful source of litigation in British Indian Courts. The Bill, I have no doubt, has considerably simplified the law as to adoption and the rights of the adopted son. On the whole, I should think there can be marriage between different communities—it has become part of the chapter on adoption, because when once you agree to the principle that there can be marriage between different communities—it has become part of the law—all these restrictions which have been obtaining in regard to the eligibility of the boy to be adopted must necessarily go. When *gotra* has disappeared, how can *sagotra* be a qualification for adoption ? Therefore, in the interests of simplicity and of logic, we have necessarily to see that giving and taking are enough ; we have to reconcile ourselves to this situation. Having taken the first step, you cannot stop at the second step. The Legislature here has already taken the first step. Therefore, there is no use fighting shy of the next step. Under those circumstances, I would commend for the favourable consideration of the House the Chapter on Adoption.

I am just coming to the other parts of the Bill where I differ from the Members of the Select Committee. In dealing with the institution of joint family, the problems of Indian agriculture and its future and the position of many trading facilities belonging to communities which have trade or business as their principal avocation must necessarily form an important factor. Anyone who is in touch with conditions of village life in India knows that particular families have long been in possession of particular lands from generation to generation, that being the main reason assigned for conceding occupancy rights to tenancy families who have been cultivating the land for a long time. Here I must say that I radically differ from my respected friend, Mr. Santhanam, in regard to what he said about village life in India. It is not correct to say that the joint family is breaking up. I also

claim to be in touch with village life in India. I am a villager myself, though I have spent about forty years in the City of Madras. Hardly has there been any year in these forty years in which I did not spend at least a month in a village. I spend a good part of Christmas and the summer vacation in the villages and with the people of the villages. Therefore, I claim to know something of village life in India, at least village life in Madras, though I know very little of village life in other parts of India excepting through the medium of books and village manuals. Therefore, I wholly disagree with the statement that so far at any rate the villages of India are concerned, the joint family life is breaking up. At the same time, I certainly agree with my friend, Mr. Santhanam, in this, *viz.*, that so far as what may be called collateral branches are concerned, after the first generation, there is a tendency for the joint family to break up. In the first generation there is no breaking up, certainly not during the life-time of the father. If there is any breaking up, it generally is after the children of the father pass away and children's children come into their own. Therefore, you must take the existing state of things into consideration instead of proceeding merely on theory. I myself have been a member of a joint family till recently and I still believe in the ideals of a joint family life. I certainly think that in certain aspects of life in regard to education for example, the joint family system has done a good turn. Many a poor brother has starved himself in order to educate his brothers ; many an uncle has starved himself in order to educate his nephews. A sort of qualified Socialism has existed in the joint family life. At the same time, I agree that no institution can last for a long time. No institution must be allowed to come in the way of social progress. But the question is, has the time come for this question to be taken into consideration? I do not subscribe to the view that the joint family system is breaking down so far as the villages are concerned and in any scheme of reform we must remember that India is a land of villages. The rural people are still following the joint family system to a large extent. The recent inroads made into the joint family system by conceding rights to the widows and daughters-in-law have not materially effected the position. Even in regard to non-agricultural property, communities which have trade as their principal avocation are still carrying on trade or business as a family adventure or business. It is so in my part of the country. I have had a good deal to do with the Natukottai Chettiars for the last forty years, and it is only within the last five or ten years that they are starting companies not with

the idea of breaking up joint families but to see that they get out of income-tax regulations. Therefore, it is not correct to say that joint family life is breaking up either among the *Vaishyas* or among the Natukottai Chettiars or among the *Marwaris.* Now, sitting in this Legislative Assembly or Parliament, there is no use our thinking that we are in possession of all the facts regarding every nook and corner of India and legislating on that basis. The only thing we have to consider is, is it so out of tune with modern conditions and is it going to stand in the way of further progress ? You have also to note certain changes which have already been made in the joint family law. The rigours of joint family law have been considerably relaxed in recent years. It is now settled law that any member of a joint family may by a unilateral declaration sever himself from the rest of the family without reference to any court of law. The manifestation of will or intention on the part of any member of the joint family is enough for severance, even so many still continue as members of a joint family because still they like the institution of the joint family. Any member of a joint family may alienate his share of the family property. In the case of father and son, the entire property is liable for the debts of the father. The son is responsible for the debt of the father. He cannot escape his responsibility by saying that the debts were incurred by the father for immoral purposes. I am certain that that sort of litigation is fast dying down. There is no question of escape now by saying that the debt was incurred by the father for immoral purposes. Then again, the law as to self-acquisition has been considerably simplified. Decisions of the Privy Council have made it quite clear that if a person acquires property, he can keep it for himself. Therefore, the plea that I would make to my friend, the Hon. Law Minister is that this institution still obtains. It may break up in the course of the next fifteen, thirty or fifty years. With the change in the law of marriage and other things, it may break up. But my whole point is, without reference to the will of the people, without reference to their consent, without taking into account the general consciousness of the people, why undertake this legislation ? You may think that I am a kind of ancient fellow who does not understand these things. I do want that this country should move with the times, but my plea is you should first ascertain the will of the people. It may be argued. “All right, so far as agricultural property is concerned, we will not touch it, but we will make a change in regard to non-agricultural property”. It is not easy to make a distinction in matters of this kind between one kind of property and

another land or property. Once you change the law in regard to non-agricultural property, a change in the law in regard to agricultural property must necessarily follow. Though in the matter of distribution of legislative power between the Union and the States for taxation purposes, a distinction is maintained between agricultural and non-agricultural property, it is an accident only that certain power is given to the provinces and certain power is given to the Centre, and it cannot be denied that Hindu law of succession is single and entire. Succession is not a truncated affairs. Succession cannot be split up. Therefore, when you consider the question, you should consider it in all these aspects both in regard to agricultural property and in regard to non-agricultural property and you should address yourself to the question whether in the larger interests of society, the time has come for a revolutionary change in the family system. I request my hon. Friend, the Law Minister to consider the question why certain chapters of the Bill should not be postponed.

Sir, I just want to deal with another aspect of the question namely the rights of succession of sons and daughters in regard to succession proper. I have got a special claim to speak on that behalf as I am a father of both daughters and sons and I repeat that. In fact the majority is on the woman side, four daughters and three boys. Therefore, I have a special claim to speak on this subject (*Hear, hear*). Apart from what little I know as a lawyer, I have a special claim to speak as a father of daughters and of sons. Now, I want you to look at the general set up of the Hindu family in dealing with this problem. If three sons find it difficult, you say, to live together and to own property in common how can you expect the daughters married to different people, may be people belonging to different castes or communities to carry on joint cultivation in villages ? Under those circumstances, is it in the larger interests of the country, that this property of the father as well as of the son be divided up equally between sons and daughters without any question of difference ? If it is a question of justice, if it is a question of equality, if it is a question of theoretical equality, I have nothing to say against it, but law is not logical—it does not mean that it is always illogical—but it has to take into account the social strata of society, the consciousness of the community, its effect upon the family life and other factors. Therefore, you have not a clean slate to write on. Therefore, let us take what happens in a Hindu family, Mr. Santhanam looks with equanimity from Delhi. If any marriage takes place in a brother's house, the sister and the

daughter occupy the most important part. It is regarded as a father's house, the son looks upon the family house as his house. Every one of us know what an important place the sister and the daughter occupies in the household. (*Hear, hear*). If the mother and father sit together for the *Aarathi,* it is the daughter, it is the sister that brings it and you give the present to the daughters and the sisters on that occasion. After all we are all Hindus; you cannot forget that. The very first person who receives the present will be the sister or the daughter in the household. The second thing is that no marriage can go through in any Hindu household unless provision is made for presents being made to the daughters and to the sisters. Again even though, women who may not care to bear children may not appreciate it—daughters of the family are certainly cared for on every occasion such as *srimanta* or on occasions of first confinement and second confinement. A girl generally goes to the father's house or to the brother's house and it is only after getting two or three children that the girl does not go to the father's or brother's house, and this is Hindu life to-day. It is not the life in Delhi, it is not the life in Calcutta, it is not the life in Madras that is to be the guiding factor in these matters. It is the normal ordinary life in every village, in the whole of India, (*Hear, hear*). Therefore, I would ask you most respectfully the Members of this House, though I am addressing Mr. Deputy Speaker, to take these factors into consideration. The Bible said "I shall set father against father, son against son and brother against brother" or some such thing, but let not legislation result in a feud between the members of the family, an unnecessary feud between the members of the family. A certain amount of bickering, a certain feud is inevitable, so long as property is there.

Sankara said that property is the soul of strife in our country and that is inevitable, but let us not give an impetus to it by stating that I shall set brother against brother, a sister against the brother, the brother against the sister and in that way mould the family life of the India at present. The time may come when each daughter may arrange for her marriage after they attain their maturity. Many of the girls look to their brothers for their marriage. Hardly a week passes when a brother or a father does not come and ask for a little help in regard to a marriage. It may be that I am old-fashioned to consider such requests, but that is Hindu life. I am supposed to be educated in English ways of life but what would you think of other people

who are not so educated as myself? You may be more advanced, I may be less advanced, but I still claim that I am born of the Indian soil and my ideas are rooted in the Indian soil, and therefore, I plead for the retention of these great virtues which have characterized our Indian life (*Hear, hear*). I do not want to go against the modern trends of thought or the modern ideas of progress, but at the same time while it is our duty to keep in touch with the currents of national life, with the social currents at present working, there is no use our imagining that we represent the whole of India. I may tell you, even among educated women, all of them do not think alike and even women who are in the legislatures do not think alike with some other educated ladies who are members of respectable households; they differ in some respects.

Shrimati Renuka Ray (West Bengal : General): Are our households not respectable ?

Shri Alladi Krishnaswami Ayyar : They are very respectable. I am glad that you have interrupted. I am accustomed and I may tell you they are quite as respectable, though they might be a little conservative,—as some of those people who are very respectable and who have advanced ideas in these matters. I have given my views and I certainly refuse to believe I am not a respectable man; I am at least as respectable as others, but my ways of life, my way of thinking, my attitude to these questions is different from those equally respectable because I am cast in a different mould. For example, I have the greatest respect for our Prime Minister and on certain questions I yield to him, but at the same time, I do not look at questions with the same glasses as my hon. friend, my esteemed friend, if I may call the Prime Minister my very esteemed friend. It is merely a mode of approach.

The Honourable Shri K. Santhanam (Minister of State for Trnsport and Railways) : What is your actual proposal ?

Pandit Lakshmi Kanta Maitra : He is giving his proposals in an excellent way.

Shri Alladi Krishnaswami Ayyar : I do not fight shy of that. The question I have been put is in regard to un-married daughters whether any kind of special provision may be made either for marriage or a special portion may be set apart so far as the marriage of girls is concerned. The law may provide that the daughters will take the heritage of the mothers and the sons will take the heritage of the fathers.

So far as daughters are concerned, I am quite willing to and quite anxious that as liberal and as obligatory, a provision be made for the girls who are un-married. I have absolutely no difficulty in that matter. That is my proposal. It may be worth anything, it may not be worth anything, but that is my proposal.

An Honourable Member : What about the money from the mother?

Shri Alladi Krishnaswami Ayyar : There is no use speaking about that. You take a census of the people who pay income-tax in this country? They are not many. This is a poverty stricken country. So there is no use of saying that that the mother has no property. Many are poor. They may have no property, but they cannot get away from social obligations. Those who have property may divide their property, but that may have repercussions upon the people who have no property, or very little property, but at the same time who are quite sensitive to the social and family obligations. Therefore, in any step that you take, you have to see that the social obligations are not retarded. That is the plea I make so far as this is concerned. In regard to the institution of joint family property, I differ from my friend the hon. Dr. Ambedkar. It is seldom I differ from him. And I am often influenced by him, and have occasionally influenced him. Therefore, I have no doubt that he will pay heed to some of the criticisms which those of my persuasion have offered. He may look obstinate, but there is none who yields to reason more than my friend Dr. Ambedkar. I know him very well and it has been a great asset to me, I mean my close acquaintance with him these three years. Well, that is my view, so far the institution of joint family and the rights of equal succession of sons and daughters is concerned.

The next aspect is with regard to *Stridhana* property, and on that, in so far as you remove all restrictions on the power of alienation, I am at one with the House, that is with the other Members of the House. This has merely led to unnecessary litigation, the reversionary filing suits for the declaration that alienations by the widow are invalid, going to this court and that court, and all sorts of evidence being let in. If only in the interest of unnecessary litigation being avoided, I am for the widow being given absolute powers of disposition during her life-time. But from that it does not necessarily follow that the course of devolution must be the same with regard to every kind of *Stridhanam* property. You call it *Stridhanam* and then begin to attach

certain consequences in the matter of succession. Once you make it absolute property, why not it descend to the heirs? That is the question. I am willing to put the question to ninety nine Hindus I meet, "Here is a property devolving uopn the widow from her husband. It is absolute property, and after her death it is to go to her father and mother, in preference to the father and mother of the man whose property has devolved upon the widow." I put that question. You may take a referendum in any part of the country and I am quite clear what the result of that referendum will be. And I challenge any Member to say in this House that the referendum will be other than what I feel. Therefore, as a lawyer, if you put me the question, can you have two kinds of absolute properties, one kind descending in one way and another kind descending in another way, and ask me, why not in the interest of uniformity, give the same rule of succession for one kind of property and the other kind of property? Then I say that you need not sacrifice social sentiments at the alter of logicality. Law need not always be logical. Law need not necessarily be Logical. Logic is not the essence of law.

The Honourable Shri K. Santhanam : Should law be generally illogical?

Shri Alladi Krishnaswami Ayyar : My answer to my friend Mr. Santhanam is that law need not necessarily be logical. That is so because law is the product of social evolution and social adjustment, and therefore, how can it always be logical? Society does not move according to a particular standard or plan. Unfortunately, society, except in a communistic society, does not move in that way. Therefore, under these circumstances, you take the average sentiment of the Hindu into consideration. There is no use of saying that it is illogical to draw a distinction between one kind of *stridhana* and another. Why should the *Stridhana* be allowed again to go to the husband's kindred? Why not it go to her heirs? In the very Bill that is the provision that is made. Therefore, so far as woman's property is concerned, I think that is a point which may receive the consideration of the hon. Law Minister, before the Bill becomes law, consistent with the sentiments and the general feeling among the people. Until recently the widow did not have the power of disposition. The question is whether on the theory that each person when he inherits property, he or she must become the stock of descent, inherited property of every description must be treated alike. That is my plea with regard to woman's property. Throughout I have refrained from resting on logic.

And lastly, Sir, I may mention, if I may, a few words with regard to distant heirs. I feel that the present provisions are a great improvement upon the previous Bill. It has drawn upon certain principles of *Dayabhaga* and it has also brought in the other systems. And I think, so far as distant heirs are concerned, the Bill as it stands is a great improvement upon the original Bill, and if there is any defect here and there, they can be removed easily.

The chapter on guardianship, maintenance, and the other chapters are conceived in a very liberal and progressive spirit, and I think they deserve the whole-hearted support of the Assembly, though it may be that here and there, they may require some modification, but that can be easily done at a later stage of these proceedings. Therefore, in the full confidence that the hon. Law Minister as well as the Prime Minister will be responsive to public criticism, while taking into account the progressive tendencies of the age, I move for the second reading of the Bill and I support the motion moved by the hon. Dr. Ambedkar.

***Dr. P. K. Sen** (Bihar : General) : Sir, I am quite conscious that I must be brief, as there is a great pressure upon the time of the House. At the same time there are certain aspects which have been raised, even by my predecessor, my esteemed friend, Shri Alladi Krishnaswami Ayyar, which do call for some comment. He has followed the order of the Bill, as a matter of fact, and taken the law of marriage first of all. I must confess that I could not exactly follow him as to whether he gave his opinion in favour or against it. As a matter of fact he said in one part of his speech, while dealing with that section, that he had no definite opinion on the subject. So far as the law of marriage and divorce is concerned I do feel that one must be definite. There is no part of law which calls for definiteness more than the law of marriage, because, it affects not only the parties who solemnise the marriage between themselves . . . . . .

Shri Alladi Krishnaswami Ayyar : Sir, I do not know if I had made myself clear. What I said was that if we had had a clean state to write on, we might do otherwise but having regard to the previous step taken by this House and the legislation undertaken, there cannot be any serious objection to the portion relating to marriage excepting in regard to one or two matters, which I mentioned in the course of my address.

Dr. P. K. Sen : Except in relation to sacramental marriage. I suppose.

* C. A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 519-27.

As I was observing we have to see that in every respect the law of marriage should be perfectly definite and explicit and there should be no ambiguity at all about it and it is for that reason I take it that the Bill contemplates that even when the marriage has taken place according to the sacramental form there may be objections raised with regard to it. It may be urged that there had been some irregularity, some omission, some particular form of ceremony not having been observed. Take, for instance, *saptapadi.* Everybody knows that *Saptapadi* is an essential factor. Not until the seven steps have been taken can the marriage be said to be valid. In fact, all manner of irregularities may be urged as objections with regard to the marriage. It is for that reason that it has been provided in the Bill that even when a marriage has been solemnised according to certain sacramental form, it is open to a party (it is only permissive) to go and have the marriage registered, so that there may be no objection raised later on with regard to its validity. This is, I submit, absolutely essential, because it is not only the two parties who solemnised the marriage between themselves who are affected but it is the next generation and the next generation, indeed, generations unborn, that are affected by it. The whole question of legitimacy depends upon it. Therefore, I submit that whatever may be the irregularity, there must be some method by means of which the legitimacy of children and their rights of inheritance may be protected and may not be left in uncertainty. There can be no difficulty whatsoever : there is some way of ascertaining what the necessary forms are which have to be observed in order to make a sacramental marriage valid. That too has been provided for in the Bill in the form, *viz.,* that in any particular area it may be found that a particular set of ceremonies is regarded as essential to the validity of the marriage : in that event those ceremonies will be regarded as validating the marriage. Nevertheless, it may so come to pass that some of these ceremonies have been performed or it may be that the performance of those ceremonies were not exactly in the manner prescribed. In that event what is to happen? Is the married couple then to remain in the position which would make their children illegitimate in the eye of law? It is for this reason only that it has been made optional for the parties to have their marriage registered in order to get it validated.

I come to the next question about public opinion and about their being a large body of the public not having been sufficiently apprised

of the contents of the Bill. The question has been raised often and often here, why hurry why not wait for a year or two or three years? We have already waited long enough. Why should we not wait for another period? It is not a question of eleven years which the Hindu code has taken, nor is it a question of two years which have elapsed since. This has been mooted from the last century.

The House will be pleased to recall Act III of 1872. The Special Marriage Act which was first placed before the legislature was in 1868 by Sir Henry Maine at the instance and on the initiative of Keshub Chunder Sen, Bengal's great social reformer. As a matter of fact, to go further back, in the fifties of the last century, the Widow Re-marriage Bill was on the legislative anvil. The great Ishwar Chunder Vidyasagar was exerting a great influence on the public mind to get their support for Hindu widow remarriage. It was at that time that a remarkable petition signed by four hundred men was put up before the legislature, in which they said that although they were orthodox Hindus, they did not believe in restricting themselves to a particular caste, they believed in inter-caste marriage, they believed in monogamy, they believed in certain ceremonies being essential for the purpose of observing pure Hinduism but that they wanted to eschew other ceremonies and that, therefore, they wanted the help of the legislature to pass a comprehensive Bill, not only the Hindu Widow Remarriage Bill but a Hindu Marriage Bill, in which provision would be made for inter-caste marriage, for adult marriage and for marriage solemnised with certain ceremonies only to which they did not take exception, and not every ceremony which at that time was considered to be obligatory. This was somewhere about 1856 and it was a most representative body that put forward this petition. Among those notable public men who signed the petition were people like Peary Chand Mitter, Radha Nath Sikdar, Abhoy Charan Mullik, and Rasik Krishna Mullik. They had nothing whatever to do with the Brahmo Samaj : they were orthodox Hindus. Side by side with this organisation there were all the activities of the Brahmo Samaj going on. The Brahmos had already solemnised inter-caste marriages, because they believed that "Right was right: to follow right were wisdom in scorn of consequence." They did not care what the law was. They said that they would break down caste notwithstanding the fact that there might be difficulties regarding legal validity. Later on they thought that this state of affairs should be removed for the sake of posterity, for the

sake of the children and it was therefore, that Sir Henry Maine introduced a Bill which ultimately emerged as the Special Marriage Act of 1872. That this Act has catered not only for the Brahmo community but for a much larger body is testified to by the fact that after the passing of the Act several amendments have been sought in order to make it applicable to other sections and in order also to obviate certain objections to particular sections of the Act. In doing so, these people at different times acted as the representatives of the conscience of the society—the minority conscience, let us say. But the minority has a conscience; and the social conscience of the minority also must be respected. In every country we find that it is the minority conscience which has always come to the help of law for the purpose of vindicating its own view. Well, Sir, today we do not know which section is in the minority and which section in the majority. But it goes without saying that in a democratic form of government all sections of people must necessarily have their consciences vindicated, and their ways of life and thought, at least so far as fundamental points are concerned, respected. In that view the question that really has to be solved by us is this : Is this Bill in any particular respect imposing itself upon the conscience of any particular section? *(Babu Ramnarayan Singh :* Yes) And by that will its excellence or otherwise be tested.

Now, if we come to the first part of the Bill, so far as the question relating to marriage, divorce, judicial separation, guardianship, alimony, custody of children and so on, is concerned, so far as I can understand, it cannot possibly be contended that it is being thrust upon anyone. After all, it is only in those cases where you find that divorce has become absolutely unavoidable that the provision will be utilised. And there are such cases, there can be no question whatsoever about that. There are cases where continuance of the marriage bond will really lead to misery from the point of view of both parties, will lead to disintegration of the family. It is only there that divorce can possibly come on.

Sjt. Rohini Kumar Chaudhuri (Assam : General) : May I ask if the subsequent marriages become happy? They become worse.

Shri L. Krishnaswami Bharathi (Madras : General) : It depends upon the lady you marry!

Dr. P. K. Sen : I am not going into that question because in that case it would be a matter of statistics as to how many cases have really become happy or how many cases have really become happy

or how many cases have turned out unhappy. That is not the test. The test is unavoidability. Is there anyone who can possibly say that in no circumstances should there be a separation at all? There may be circumstances imaginable where there should not be separation. It is for us to sit down with good will and mutual understanding, and discuss all these points and find out whether it is going to be compulsory upon any particular party or not. There is no compulsion at all here. It is perfectly optional. If you find that it has become impossible to carry on you can go to a court of law. The court of law will go into the matter, find out whether all the requisites of a divorce or a dissolution of marriage are present and then issue a *decree nisi,* or whatever it may be. But that does not necessarily mean that divorce will go on multiplying from day to day. That depends entirely on the temperament of the people. And I feel bound to say that because it has taken a particular course in America or England or in other foreign countries, in India also it should take the same course— that is an impossible conclusion. *(Pandit Lakshmi Kanta Maitra:* It is the same institution). I do not believe at all that in India the same result will follow.

Pandit Lakshmi Kanta Maitra : Worse.

An Honourable Member : Is it not time to rise for Lunch?

Mr. Deputy Speaker : I think the hon. Member is likely to conclude soon.

Dr. P. K. Sen : I am trying my best to conclude soon, but I have just begun.

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

The Assembly re-assembled after Lunch
at Half Past Two of the Clock, Mr. Deputy Speaker
(Shri M. Ananthasayanam Ayyangar) in the Chair.

Dr. P. K. Sen : Sir, when this House rose for mid-day recess, I was on the point of the permissive nature of the provisions regarding divorce and allied matters. The question that was put to me in the course of the debate was why there had been so many divorces in other countries.

Shri Mahavir Tyagi (U. P. : General) : On a point of order. I find only the hon. Minister of State for Transport and Railways sitting

on the Government Benches. The Bill under discussion neither deals with Railways nor with Transport. Will you be kind enough to call the Hon. Law Minister, Sir ?

Mr. Deputy Speaker : I am sure the Law Minister will be here soon. Till then, the other Minister who is here will take notes.

Shri Ajit Prasad Jain (U. P. : General) : This is almost a contempt of the House.

Mr. Deputy Speaker : I have got chits sent to me by no less than 36 members so far.

Shri M. Tirumala Rao (Madras : General) : Some have not sent our names. Our chits are lying here.

Shri Mahavir Tyagi : And many have been waiting to catch your eye. They have not sent chits.

Mr. Deputy Speaker : So the position is that, besides these 36 there are others also trying to catch my eye. As the position stands at present, Government had fixed only yesterday and today for this Bill. I do not know the state of government work. I do not want to stifle discussion, but at this rate I do not think we can go on. Therefore, I suggest to hon. Members to limit their speeches, as far as possible, to fifteen minutes.

An Honourable Member : Impossible. You suggest to Government to extend the time.

Shri R. K. Sidhva (C. P. and Berar: General) : Such members as are hopeful of finishing their speeches within five or ten minutes should be given preference. There are many such members, I know.

Shri L. Krishnaswami Bharathi : But will they keep to their assurance? That is the point.

Shri R. K. Sidhva : I give a definite assurance.

Shri Biswanath Das (Orissa : General) : May I just bring to your notice, Mr. Deputy Speaker, that the hon. Speaker had given an assurance to this House that he would give full scope for discussion of this motion and it will be unfortunate if you allow only ten or fifteen minutes for a speaker. It is something absolutely different from an ordinary Bill. It concerns the life and the economic and social existence of crores of people. Under these circumstances, I would beg of you to stick to the assurance given by the hon. Speaker.

Shri L. Krishnaswami Bharathi : He is the Speaker. He can now decide.

Mr. Deputy Speaker : It is unfortunate that the Speaker is not here in his seat. I do not want to stifle the discussion, but I am only suggesting a time-limit so that all Members who want to take part in the discussion may have an opportunity. I leave it to the good sense of the hon. Members themselves. Fifteen minutes is not an inviolable limit. One minute above or one minute below may not be very bad. But beyond that I am afraid even if the government were willing— I do not know whether they are willing or not—to extend the discussion by a day, it would be impossible, having regard to the number of speakers who want to speak, that everyone will have a chance.

Pandit Balkrishna Sharma (U. P. : General) : Then keep it to the next session.

Mr. Deputy Speaker : It is not in my hands.

Shri S. Nagappa (Madras : General): Why not sit for one or two hours longer?

Mr. Deputy Speaker : At present the Members who can finish their speeches within fifteen minutes can do so, but in cases where individual Members consider that they must have more time, they can have more time.

Shri M. Tirumala Rao : You can consider the merits of a speech, and if many arguments are repeated, you can ask the speaker not to repeat the arguments.

Mr. Deputy Speaker : Very well, then, Dr. Sen.

Shri H. J. Khandekar (C. P. and Berar : General): There are only 2½ hours more. Only ten speakers will be able to speak even if each speaks for fifteen minutes. What about the others who want to speak on the bill? I request you to request government to extend the debate by a day or two. This is such an important measure that the eyes of the whole nation are focussed upon it. We must have full discussion over it and then only pass it, in whatever form it is agreed to.

Mr. Deputy Speaker : I am sure the proceeding of this House and the suggestions made by hon. Members will be communicated to and taken notice of by Government. Dr. Sen may continue his speech.

Dr. P. K. Sen : Sir, I quite realize that brevity is the soul of wit, but there are occasions when brevity is the soul of unwisdom, because I shall not be able to make things clear at all and therefore, it will not benefit anybody at all if the House were to hear a discourse which is inconclusive and obscure. I shall therefore, try to touch only on the fundamental points and not enter into details at all.

The question that I was last addressing this House on was, whether or not by giving permission for divorce this country will not be plunging itself into a large number of divorce cases like other countries. My answer to that question was—and is—that the cases for divorce will depend entirely upon the quality of the moral values that a country has. A society may be so constructed that only in absolutely unavoidable and necessary cases would the parties seek a divorce and that there would be inherently a dislike, a distaste, a contempt for divorce where there is no occasion for it and where evidence is really fabricated for the purpose of establishing that there are reasons for divorce. In this country the experiment has been tried in Baroda and in some parts of South India, where there is and there has been divorce for a long time past, but I am told there have been only three cases so far in Baroda and these three cases during twenty years. I submit, again, that it is the social atmosphere and the moral values prevalent in the particular society that determine the number of divorce cases. Therefore, it is not the law that makes the society. The law only gives sanction to certain cases where it is necessary to give sanction for divorce. In this part of the Bill which deals with marriage law there are four characteristics. The first is : inter-marriage has been allowed. The second is that there is prescription for divorce. There is, thirdly, prescription for monogamy. Now all these are present in Act III of 1872 and, therefore, it is not the Hindu code which has raised these points for the first time. It was in the fifties of the last century, as I have said, that the agitation arose and ever since then the agitation has been going on. The crusade against caste was no doubt first led by the Brahmo Samaj under Keshub Chunder Sen. The Brahmos at that time suffered persecution, ex-communication and ignominy of every description. Today we recognise that caste shall go and therefore, all these provisions that are laid down here in this Bill relating to intercaste marriage need not raise any opposition at all. There is no doubt whatsoever that there is a very large body—if not an overwhelming body—of public opinion in favour of abolition of caste. Otherwise, what are all these provisions that we have laid down in the Constitution? Caste shall go. If we take that position then there is nothing objectionable so far as those provisions are concerned which relate to intercaste marriage.

The same consideration applies to monogamy. I do not know whether there is any public opinion now in favour of bigamy or

polygamy. There may be individual cases; but that is quite different. The whole body of public opinion now, I submit confidently, is in favour of monogamy. Therefore, there is nothing objectionable, so far as that is concerned in the present Bill, and, as I have said, permission for divorce cannot possibly raise any difficulty because, after all a permissive provision must necessarily be there for those unfortunate cases where divorce is called for.

Proceeding, Sir, to the next point as to why there should be any change at all (that was the point on which I was) it has been said that there must be a strict adherence to *Shastric* law and that there should be no departure whatsoever from it. For hours this discussion has been carried on the floor of this House. It has been contended that *shastric* law is absolutely final, inviolate and inviolable. You cannot change it. I should like to know what *Shastric* law means. As a matter of fact, in our *shastras* there is always provision for change and there has always been change. Otherwise what is the meaning of these numerous *Smritis*. We have it in Manu the well known injunction that there are four sources, four norms, of conduct laid down:

श्रतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मन ।
एतश्चतुर्विध प्राहः सक्षाद्धमस्य लक्षणं ॥

Which being translated means *Shruti, Smriti,* the usages established by righteous men and the satisfaction of one's own inner self—these furnish the four standards or norms of conduct. These four norms of conduct include within them the inner satisfaction of the soul, the conscience by which, I take it is meant not individual conscience only, but social conscience also. The social conscience of the age in which we live has got to be respected and that is one of the standards by which our conduct, our *Dharma* is to be ascertained. That is one of the standards by which law must be laid down and it is on this principle that all along, the law, the so-called *Shastric* law, has changed and changed and changed. My hon. friend, the Minister of Law said in his opening speech that if you go to *Parasara Smriti* or *Narada Smriti* you find there provision for widow re-marriage, and provision for very many other things which may be called revolutionary. How did they ever come to it? How did they get beyond the barriers, as it was, and break through them and start upon something which was revolutionary? It was because according to the highest injunctions laid down, there are not only *Shruti* and *Smriti* but other

sources also. You have to take the conduct of the righteous and the pious,—those who know the way of life that leads unto self-realization—and it is those people who laid down the norms of conduct. You have to follow those. They are not *Shastric.* They are not necessarily to be ascribed to any particular *Shruti* or *Smriti,* but those are the ways of right living that have been laid down definitely for the purpose of regulating our conduct—individual as well as social. If that be so, if that is the way in which the law must evolve itself, then necessarily where we find that there is a strong public opinion, where the conscience of society or a particular section of society, the minority section, let us say, dictates that a particular way of life should be sanctioned by law, law comes forward to the rescue and lays down that it shall be so. If that be our standard, then can we possibly at this moment say that there shall be no change at all ? Can we possibly assert that our law, our *Shastric* law, has been stationary ? If it is inviolable and inviolate, if it is unalterable and inexorable, then there will be no progress and it will be a poor compliment to pay to our Indian law-givers to say that law has been stationary. On the contrary, it is time today to muster up courage and to say that the views of no particular section, whether minority or majority should be trampled upon, that if there are strong opinion held in regard to a particular point then the law must come forward to give permission for that.

I pass next, Sir, to the other fundamental points. What is the other main objection raised with regard to this Bill. It is on the question of property—the Mitakashara and the Dayabhaga. Is it possible at this moment, let us ask ourselves seriously, to raise this question? The joint family system had its virtues; it had its glories in the past. Nobody can deny that. But I have been under the impression that of late it is the tyranny of the joint family system which has appeared most obnoxious to a very large number of people. They feel that the earning people in the family are sucked dry by the indolent ones. There are people who do not want to go forth and earn at all because there is a family behind them, and they think, "What is the use of our taking any trouble for earning when there is the family to support us?" And those members of the family who by the sweat of their brow earn something, it is their income that is sucked dry by others who are indolent and who are also in every way extravagant.

Dr. P. S. Deshmukh (C. P. and Berar : General): Have they ever complained, Sir?

Shri L. Krishnaswami Bharathi : Yes, they do. Complaints are inherent in the situation.

Dr. P. K. Sen : If their complaint could be heard, then of course it will be a different matter, but if they were people in the family, then there would be no opportunity whatsoever, to make a complaint. The only way in which they can possibly complain is now laid down namely, by expression of intention to separate. Now, what is the actual position? Howsoever strong the family integrity may be, any individual member can come forward and say, I intend to separate, and that expression of intention will instantaneously effect separation in the eye of the law. Where is the integrity of the family then ? What then has the *mitakshara* family to do ? According to judicial decisions now, it has come down to this that the slightest intention to effect separation and the expression of that intention will effect that separation. In that case I do submit that it is too late in the day to say that the joint family is a huge institution which remains intact. It is tumbling down and there can be no doubt whatsoever that with the effort of man it cannot possibly be protected any longer. People want individual liberty now. Everybody who earns wants to earn and also go his own way. He does not want to be fettered by other members of the family. It is individual freedom which is now their aim and object. This cry has been raised from the earliest times. "The individual withers and the State is more and more." That is a complaint which has been heard for some time past. Today also we feel that in our society the rule of the majority, the rule of society, is predominant, but nobody wants this predominance any longer. The individual now wants to go off at a tangent. He says, I do not want to be governed by the family. I want to earn my freedom and I want to go my own way. I appeal to every individual Member of this House to ask himself if that is not the spirit of the modern times, and if that is the spirit, then where are we ? Where is the advantage in trying to bolster up an edifice that could not possibly exist any more. Therefore, this great difference which is being drawn between *Mitakshara* and *Dayabhaga* is practically gone. It may be that when we sit round a table in perfect amity and goodwill, in perfect understanding of each other, we may be able to iron out all these differences and we may be able to arrive at a very satisfactory solution without hurting the instincts of any particular section, and I do hope that that will be so. I do not want to go into details, but I just want to point out that this is the line upon which our discussions may proceed in future.

Then, Sir, take the other details. Practically in the matter of inheritance or in the matter of succession, there is nothing upon which controversy rages except on the daughter's share. All the other things are more or less now things of the past. Legislation has taken place, numerous judicial decisions have been passed whereby rights have been given to all other members of the family, those that claimed them. The only thing upon which controversy centres now is about the daughter's share. It may be half the share that the son gets, it may be an equal share with the son, it may be any other share that may be decided upon by everybody sitting round a table. I am perfectly confident that with goodwill and mutual understanding, something satisfactory may be evolved in this line. It is not that every individual member of the Select Committee is bound down by its decisions. We are all free to exercise our own views. I frankly admit that there are certain things which I do not like. There may be other members who say that there are certain aspects of the Bill which do not commend themselves to them. Therefore, all these differences have to a certain extent to be ironed out by mutual discussion, but apart from that, the fundamental question is whether the daughter has to get any share at all. Now when it is said that the daughter cannot get a share at all, then I do think—and I have no hesitation whatsoever in expressing my views freely and frankly,—I do think that it is the the same old prejudice against the female members of the family that dictates this objection.

Shri L. Krishnaswami Bharathi : Quite right. That is the real point.

Dr. P. K. Sen : We may hold our women members in high esteem. No doubt it is often said that the ladies of every family are angels of grace, that they are ministering angels. That is perfectly true, but do we do all that is needed, all that is called for, towards them? Do we do all that is wanted from the men-folk to the women folk in our families ? Let us be perfectly sincere and frank about these things. There is a great deal that has to be done for our women-folk. Women today want their place in society. Continuing to do their duty by the family and continuing to be ministering angels of the family, they have also some other work to do. They have to take an interest in public affairs. They have to take an interest in social organisations. Their presence is indispensably necessary in many organisations which are being set up today. Therefore, we cannot possibly have a framework

of society in which such women could not possibly exist. They must always be the ministering angles of the men-folk, that is to say, looking after their physical comforts and welfare, and do nothing so far as their higher aims and aspirations are concerned. But they have a function to fulfill in society. In the society of independent India, women have a very large place to fill in every organisation, in every movement. That being so, we must set them free and there is nothing that is wanted more than economic freedom. *(Hear, hear).* There are many cases in which lives are blasted because they have got to be dependent upon some male member of the family for their very existence. Therefore, the question of their economic freedom has a place in the affairs of today.

Let us not be absolutely oblivious of that fact. If we want to give economic freedom, then there is no reason whatsoever why we should turn away and say : "Oh a daughter, she cannot have a share, she will remain a ministering angel of the family" by which it is meant that she will always be a dependent there ; and if she is a widow, she will be only looking after the comforts of other people and will not be able to do any other service to the family or to the society or to the nation at large. Well, Sir, I do not propose to go further, because it will take a very long time and I know that I shall then be trespassing upon the time of others. But a good deal has been said, a great deal of discussion has taken place upon the fundamentals. When I contemplate all these discussions that have taken place, I am firmly convinced that if after this debate, we can sit around a table and we can bring ourselves to consider all these details in a spirit of perfect goodwill and understanding, we shall be able to attain a solution. The minor points that trouble us are many, it may be, but their solution is not so difficult. It is the fundamentals upon which we have to concentrate our attention and when we do so, I think our path is clear.

3 P.M.

***Shrimati Kamala Chaudhari** (U. P. General): *(English translation of the Hindi speech)* Sir, before I say a few words in connection with the Hindu Code Bill, I should like to congratulate the hon. Dr. Ambedkar for bringing forth this Bill. My own feeling is that this Bill has been brought up before this House in conformity with the spirit of time. This is absolutely in accord with the march of the time

*C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 535-40.

and present-day demand. Although it is being opposed on religious, cultural and many other grounds and various kinds of things are heard against it in the course of hostile propaganda, yet my personal feeling is that this Bill will prove a sort of panacea for our women community and the progress of our Indian Society, and this will go a long way to benefit our women-folk who are even today being degraded to the lowest ebb. Moreover, our future women-folk shall also remain indebted to the hon. Minister and this House if this Bill is passed in this Assembly.

Those who oppose this Bill have expressed the opinion that this will prove harmful to our religion as well as culture. This thing does not appeal to me at all. This is another thing that the brain and heart of our countrymen have been framed in such a way that anything said in the name of religion highly appeals to the sentiments of the people. On the altar of this very religion—in what manner did we accentuate our communal feelings ? In the name of this very religion, we have seen the murder of Mahatma Gandhi—the father of the Nation.

So, in this way, I see that this Bill is also opposed by raising a hue and cry in the name of religion and Indian culture, and those of the persons and our sisters, who cannot even as yet understand what is law, how this Assembly has been constituted, who cannot even understand the right of franchise which has been granted to them in our Constitution, are being told like this, and it is acclaimed that a great majority of women in the country are opposed to this Bill. But so far as my humble intellect can conceive, this Bill does not appear to contain any such thing which might be against our religion and culture.

In one of the parts of this Bill, a provision has been made prohibiting the right of polygamy which is at present exercised by the religious minded Hindus. This is not permitted and a ban has thus been imposed upon it. With all the humility, I would submit that I apprehend that this Bill might be opposed by a majority of our brethren for the reason that some such ban is being imposed upon them that in the life time of their wives, they shall not be permitted to contract many marriages. But I do not find in it anything against the religion, because it so looks to me after going through our scriptures and ancient literature that never during any time, even in the olden days, the institution of polygamy was looked upon favourably. After scanning through the ancient literature, we do come across such instances where the ruling

prince was allowed to marry more than one wife. We find the rulers disregarding the customs, traditions, usages and the lofty ideals—ideals regarded as sublime—on which stood the structure of our society, but I would like to cite before you an example set forth by one who is considered as an incarnation of God and who has placed an ideal before us. After looking through the great epic written by Valmiki— the epic which has safeguarded our Indian culture and which has sustained our culture for the last so many centuries—it appears that when King Ramchandra sat for the performance of *Ashvamedha Yagna* and when the priests and elderly persons told him that the *Yagna* (oblation) cannot be perfected in the absence of a wife, even at that moment he performed the ceremony by installing a gold idol of Sita and did not have recourse to a second marriage. This ideal lies before us and if we scan through our classical epic, we shall have glimpes of this at every place. During the times when Lord Rama lived in the forests and when Shurpnakha implored him for marriage, Lakshman had told her that Ramchandra was a prince of Ayodhya and was likely to become the ruler of that kingdom and that be was even in a position to marry; but the latter was already a married man and could not thus re-marry. Even at that time the utterances which our Poet Laureate had attributed to Lord Rama establishes the same very ideal that the institution of polygamy was not looked upon favourably during those days. I do not understand how the restriction placed thereon in this Bill is opposed to religious doctrines. On the contrary I think that if such actions were to be encouraged then they would surely cause the destruction of the high ideals of our Indian culture and society. I believe this to be an ideal for every Hindu who professes himself to be a follower of Hindu religion and a supporter of Indian culture. It is a great injustice done to woman that the husband is allowed to enter into matrimony once, twice, thrice or even four times in the very life time of the legally wedded wife. For a woman this custom is horribly painful and demands utmost sympathy. It is another thing that since centuries restrictions have been imposed on our women folk and the women of this country have more or less been confined within the four walls of the house. Restrictions have been imposed on their social, mental and economic rights. Their tears dry up in their eyes only and are not even allowed to trickle down. But our poets, writers and authors have given a very vivid description of this colossal suffering and tribulations that the women have to endure. For a woman

no other suffering is more tormenting than the distress of having a co-wife.

Now when the age of renaissance began and the eminent persons of our country began to realize their abject misery then, as a result of their kind efforts, the condition of the women folk was carefully considered over and hence from time to time such revolutionary Bills were passed in this House. At that time our country was in turmoil and then Mahatma Gandhi forced an entry into the social structure of our society. He elevated the women folk to such an extent that they could stand on their own legs. Today a keen desire for securing her due rights has awakened in her heart. The woman of the future will not tolerate this sort of oppression and tyranny lying down as she has been doing till today. She will never tolerate this sort of neglect and disrespect. Therefore, I think this time to be most favourable. The Bill that is before us should be passed in this House with great applause.

This Bill is being opposed on many grounds. I have had opportunities to hear such thing here. Obscene and dirty things are said against the women community, they are being stigmatised. Thus a propaganda is made here by giving publicity to such scandalous slurs against the women folk. The people here have come to believe that the right to divorce provided in the Bill would result in the destruction of the structure of our society and our culture would go to dogs. I do not understand how people give rise to such apprehensions and how they resort to such talks. But as far as I have studied this Bill I have not come across anything concerning the dissolution of marriages that can be called an innovation, or anything that has not been allowed and permitted by our sacred texts and holy scriptures. All the conditions that have been laid down for the dissolution of marriages, or in what manner the marriages can be dissolved, or for what seasons divorce can be granted. I think all these conditions do exist in our *Shastras.* I myself believe in Hindu religion and culture. I am a Hindu woman. Wherein lies the glory and importance of the woman I know that also. For centuries our sages and preceptors, poets and writers have sung songs about the greatness of the Indian woman and have mentioned her in the most glorious terms. I know that all this greatness has not been attributed to female form only, they have sung songs about her noble spirit of renunciation instead. I think that this high ideal is very good for us. Not from today but from ages the Indian woman has been maintaining these ideals and the glorious history of

her renunciation and ideals will for ever go down in annals of Indian culture and the history of mankind.

But in every society it has been found impossible for each and every individual, may be male or female, to live up to the highest of the ideals. Mahatma Gandhi has been acclaimed a superman by the whole world. He placed before us his ideals and though being his followers we ourselves could not live upto them. Similar is the composition of the society as also of the world. If this whole world and our Indian society in particular were to maintain the high standard of ideals then, I think, this very world would become a paradise.

Whenever some high ideal is set before the people then in order to create a proper atmosphere for it a number of things have got to be done. Take the case of the Hindu marriage system for instance. At the time of marriage the priests interpret this alliance to be so indissoluble, so everlasting that it would hold good for future births and re-births also. I don't believe this. Because while on one side according to Hindu ideals we are led to believe that this marriage alliance between a Hindu male and female lasts till eternity, on the other hand in our holy scriptures it has been laid down that according to the philosophy of *Karma*, this alliance would have continued eternally even if in previous births, the husband may have been a human being or a demon or an animal, but I do not believe in such a thing. What I believe is that marriage is just a compromise for the life time. If our married couples were to hanker upon the legal possibilities regarding the dissolution of marriages then I think that our life would become quite useless. The result of such a state of affairs would be that the people will never be able to raise and maintain happy families. If such state of affairs do exist anywhere, then under such circumstances, there can neither be the evolution of our religion nor the cultural development of our country can take place. If under any circumstances the separation be deemed essential then I think the legal right must lie with the woman. Many defects have cropped up in our present day society. I think instances are not only known to me but all the gentlemen present here must be in the know of them. A husband can marry a second time even when the age of his wife may not be much. On the other hand a woman whose age may only be 16, 17 or 18 years cannot re-marry ; she has not been authorized to get her marriage dissolved. What such a state of affairs results in ? I do not want to go in details. I very humbly beg to submit only

so much that such things result in grave disasters. Legally that woman cannot re-marry. Her legal husband has no relations with her. May she lie in the abyss of the society and suffer extreme distress and tribulations, yet the society does not allow her to enter into an honourable remarriage whereby she may be able to support and sustain her children, set up a family and pass the rest of the life in comfort and ease. Under such circumstances I wish that the woman should have this right. I do not wish that this right should so commonly be used that it may create retalliation and every man or woman may begin to think that they can have separation if and when they like. As far as I think this Bill does not provide so much facilities as the people profess. The most outstanding speciality that I can see in this Bill is that in 80 per cent, of our community I have seen that a *panchayat* is called and separation is effected within a minute's time. At places and in certain communities even the *panchayat* does not assemble to give its decision. Males and females are quite free and leaving each other, they can re-marry whomsoever they like. The utmost punishment the community can impose upon them is that they are somewhat chastised or ex-communicated and after giving a community feast, they are again taken back in the folds of the community. The passing of this Bill will highly benefit those communities wherein separation and divorce are considered to be very insignificant things. This Bill will impose restrictions on them also and the greatest benefit that we would have of this Bill is that our backward communities which have no cultural background will become cultured and their moral standard will be raised. This is the most outstanding speciality that I have come across in this Bill.

The strongest opposition that is being made against this Bill is I think about the question of the property, for the reason that this Hindu Code Bill seeks to provide the daughter also a share in the father's property equal to that of the son. A number of different things are being said about this measure. Some hon. Members hold the view that by adopting such a measure the innate affection and natural love between the brother and sister will cease to exist, our heredity and our entire family system will be disrupted. I cannot understand this thing because as we see today, if a person has two or four sons then it is not at all essential that these brothers fight among themselves or kick up disputes. But at the same time we do sometimes hear of such incidents and many instances are before us that such disputes are kicked up and they become deadly enemies. So I think that if

it be taken for granted for brother and sister also, that after inheriting the property they will also kick up similar disputes then, as such disputes generally take place between brothers also so they do not matter much, Moreover at that time, do the persons who profess the culture to be in danger ever try to proclaim that this inheritance of property kicks up disputes and quarrels among the brothers so it should better go ? Are such disputes in accordance with our culture ? The glory of our religion lies in natural affection, mutual love and in being on good terms with others. This is our culture according to our religion. I see many such instances where the solitary sister has got a deep affection for her brother. Loves are of different kinds, but the love that a sister has for her brother, I think, is so unassuming innate and pure that no other kind of love can stand up to it. Such an affection she bears for her brother. Our existing law provided that the property that was owned by the mother, the *stridhana,* and the ornaments that the mother possessed were inherited by the daughter. But everywhere it has been seen that the sister has shared the ornaments with her brothers and nobody has ever seen them quarrelling over the division. If the high ideals of our women folk hold good then a sister will always be prepared to sacrifice her all for her brother. There will be very few cases where such disputes will take place. If for the time being it may be taken for granted that such state of affairs will come to pass, still then I will say that this is a grave injustice. I am able to recall the case of our big *talukadars* where the brothers live extravagantly on the property left by the father. For themselves, they spend such heavy sums on the occasion of *Tij* and other festivals as might have served the sister for a lifetime. If, however, a widowed sister happens to come and live in that very home, her place is in the kitchen and her lot is none better than that of a cook. In the home where, today brothers enjoy life on the strength of the father's property, the father's wealth, in that very home I have seen with my own eyes the sister pining for milk for her young children. She too has the desire that her children should have good things to eat and good clothes to wear and that they should receive good education in the same way as her brother's sons. But the law has sealed her mouth. She is tongue-tied and dare not give vent to her feelings. I would like, very respectfully, to ask those people, who are opposing it today, whether this is in accordance with the Hindu law and, if so, which school of our philosophy sanctions this injustice shown to woman. Hence, I think that the provision relating

to the daughter having a share in her father's property is very much in consonance with the times and compatible with our faith and culture and I hope it will be considered in a very generous spirit.

In opposing this provision, several people have also averred that the idea that a woman should also have a share in her father's property took birth in the minds of those persons who are imbued with a foreign culture and who have not read Indian literature. I shall not be taking much of your time and should like to tell you briefly that this sentiment finds ample expression in our folk-songs which have existed for the last hundreds of years. This sentiment did not get into our folk-songs at the time of our mothers and sisters but has been there since the times of our grand and great-grand-mothers when there was not even a trace of foreign culture anywhere and when it had not set any kind of seal on our culture. The songs that are sung at the time of marriage in our Province contain this sentiment and I think that such songs are sung at marriages in all Provinces. I do not here want to recite the actual lines of those songs but would briefly like to state that such songs are sung amongst us at the time of marriage, at any rate in our Province with which I am familiar. I have also studied the folk-lore of some other Provinces where too a similar line of thought exists. We find a very wholesome sentiment forming the burden of these songs. The girl gives expression to her desire to have one-half share in her father's 'dominion'. The brother offers her various kinds of temptations, saying he would give her a plate full of ornaments, that he would give her horses and elephants and also enumerates the various articles he would be giving her by way of dowry. The girl replies that if she is destined to acquire all that wealth, it could also become available to her when she goes over to the house of her father-in-law and her husband but that she would rather have her one-half share here, that she has been brought up in this home and that she would like to have a share in the orchard and the tank here. Thus there is absolutely no foundation for the allegation that this sentiment is the product of foreign literature, or foreign education, or foreign culture or that it is a creation of the minds of those persons who have received their education from foreign sources. Our ancient literature abounds in that sentiment and our folk-songs would offer various such examples as reflect that feeling.

Nature has made a boy and a girl equal in the eyes of their parents. Then why is it that a boy should have a share in his father's property

but a girl should have none ? I feel that is also a kind of injustice. This is another matter that in view of the present set-up of our society some people might, per chance, be entertaining doubts and anticipating difficulties with regard to the practical application of this Bill, because the position occupied by a "son-in-law" in our society is rather peculiar. All his life he is called *Jamai babu* or *pahuna* (the Guest) and never becomes a member of that family. I feel that if the daughter is conceded this right, the result would be that the son of another family who comes in as the son-in-law could also live as a member of the daughter's family as if he were a third son to the father who already has two, and this should encourage mutual love and affection. The argument that this would strain relations between brothers and sisters or break them for good cannot appeal to me. I do not think that if this law is passed it would mean the disintegration of all our social, cultural and religious traditions. I am unable to appreciate that argument. With these words I express the hope that those people who have passed our new Constitution, who are out to make a radical change in our social and political set-up and who have conceded in that Constitution the equal rights of the women, will reflect coolheadedly over the present position of our women. Let them hearken to the call of the times. We should concede this right straightaway, Scholars, men of letters and historians have held the view, that if a society which steps forth into the field of progress, does not promptly carry out all those changes, which are urgently called for, it is likely to be left centuries behind in that field. On the other hand, if properly appreciating the call and the needs of the times, it promptly gives effect to the urgently needed changes it marches forth to a speedy progress. I hope this Bill is going to be passed by the present Assembly because here we have present, in a preponderating strength, persons who are called the followers of Mahatma Gandhi. Mahatma Gandhi was the great man who had a sound grasp of the problems and the handicaps facing the Indian women. Along with the political, revolution he also stirred up a powerful revolution against our old social conventions and was soon able to root out and destroy them. I feel that the followers of Mahatma Gandhi will give their thorough consideration to this Bill and pass it after having considered it generously and sympathetically in the light of our faith and culture. In the end, once again, I wish to assure the hon. Minister, on behalf of the women, that all those women of this country, who have been

able to comprehend this measure, are going to welcome it heartily and that even the women of the generations to come will feel grateful to him for having got it passed.

* **Shri Kameshwar Singh of Darbhanga** (Bihar : General) : Sir, it has become very difficult for those of us who are opposed to the motion moved on behalf of Government to take part in this debate after what our Prime Minister has said in this House about the measure before us on the opening day of this session. I was not present in the House when he made the statement, but if the press report be true, he has made the passage of the Bill an issue of confidence in his Government. I am strongly opposed to the measure. *(Interruption).*

Mr. Deputy Speaker : Order, order. Nothing will go on if these interruptions are made. The interruptions will only increase the time taken by the Members.

Pandit Lakshmi Kanta Maitra : Apparently the hon. Member is making a very good speech.

Shri Kameshwar Singh of Darbhanga : But I am equally strong in my view that in the present state of our country the Government of our Prime Minister is the best Government that we can have. Howsoever imperfect it may be, a better alternative to the present Government is not available. That, I think, is the view of the most of the people who do not belong to any political party. Thus, the stand taken up by our Prime Minister assumes the shape of "Undue influence", if not "coercion", for men of my way of thinking. I would therefore earnestly request the Prime Minister to reconsider the matter and unload the question of confidence in his Government from the consideration of the measure.

I would like the House and Government to postpone further consideration of the bill till the wishes of the electorate are ascertained in the next general elections for reasons stated by the hon. Dr. Rajendra Prasad, in the note which he sent in the capacity of the President of the Indian National Congress to our Prime Minister last year.

Hon. Members of this House know that there is a great divergence of opinion with regard to this important measure of, if I may say so, revolutionary character. It affects the personal law of the vast multitude of people. It affects their social and economic life as well as the forms and customs that have grown with the various schools of the Hindu law during so many centuries. In the name of uniformity and codification it threatens to arbitrarily disrupt the fundamental social

*C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 541-43.

and economic structure of the Hindu community embracing all except the Muslims, Christians, Parsis and the Jews. I fully agree with the observations of you, Sir, and Sri Ram Narain Singh contained in your notes of dissent on the Report of the Select Committee on this Bill. The members of the present legislature have no mandate from the electorate even with respect to the major issues involved in the Bill. After all, the next elections are not far off and nothing will be lost if the matter is deferred till then.

I am definitely of opinion that such vital changes as are proposed in the measure should not be made in this manner. If one cares to look into the views expressed before the Hindu Law Committee, he will not fail to notice that the opposition to the Bill is very strong. I belong to that class of people which considers the *Smriti* and the school of interpretation, he follows, as sacrosanct; and the class to which I belong constitutes a large proportion of the total population of the country. We consider marriage, succession and the like as a part of our religious duty and obligation. To us these are much more than mere secular or social phenomena.

It is true that the social structure has gradually changed and is changing under the stress of circumstances. But such changes have taken place by the process of evolution and not by imposition from above. Further, these changes do not generally affect the principles on which the Laws governing the various Hindu societies are based. Now, the question is whether the changes proposed in the Bill are such as have been accepted by the people in general and require just legal sanction. My answer to this is emphatic 'NO'. No doubt, the authors of *Smritis* and their interpreters made changes from time to time but they did so when they could enforce them by the popular support they had. The bulk of the people had abundant faith in their learning, in their foresight, in their purity of purpose and above all in their conduct. The authors of this proposed Twentieth Century *Smriti* have no such background. They do not have in the hearts of the people the status of those ancient *Smritikars* whose injunctions govern the lives of so many people even today. The diversity perceptible in different parts of the country goes a great way in establishing the fact that popular acceptance and not imposition from any central political authority has been the sanction behind the personal law of the Hindu. Unity in diversity is the chief characteristic of the Hindu life and religion and we should not take the seeming diversity as an evil which must be instantaneously removed.

The fundamental difference between the outlook of the ancient law givers and the present day law-givers is that, whereas the basis of the formers' consideration was purely spiritual, the basis of the latters' consideration is grossly material and to accept it, is to give a goby to our philosophy of life, to the continuity of our tradition and to the foundation of our culture. I, for one, am not prepared to do so.

Besides this, I apprehend that there will be practical difficulties in implementing the provisions of the Bill. Just imagine how long it will take Government to educate the people that they should go to law court for getting their marriages registered. Just imagine what complications and confusion will the provisions for void and voidable marriages create. Just imagine what havoc will the provision for the dissolution of marriages and divorce play in the domestic life of the people whose conception of society has so far been quite different from the one on which these provisions are based. I do not agree with the view that only hard cases will come up for remedy. My own fear is that many interested persons will come into the picture to disrupt the domestic life of their neighbour relatives etc., for their selfish ends. Similarly, the provisions regarding succession will make the management of property difficult and become a prolific source of intrigue by designing persons in the society. Lawyers and law courts may prosper but families will be broken up and domestic peace will decay.

The report of Dr. Dwarkanath Mitter, one of the members of the Hindu Law Committee, embodies the opinions of the vast bulk of Hindus. The facts on which he has based his conclusions are irrefutable. The report of the other members of the Committee is merely an attempt to explain away the irrefutable facts mentioned by Dr. Mitter in support of his contention. It appears that the Majority of the members of the Committee had already made up their minds on major issues and took no note of the public opinion expressed before them in different ways. I wonder how the Government of India of today which is so sensitive to public opinion has considered it proper to bring a measure of this kind before this House. For the sake of satisfying the sentiments of a few so-called "progressive" element in the Hindu Community, it should not have proceeded with the measure which is opposed by an overwhelmingly large number of Hindus. If those who advocate the adoption of this measure go from village to village and collect the reaction of the Hindus on the provisions of this Bill, I am sure that they will hardly find satisfactory support. At least in my Province, the public opinion is decidedly against this Bill.

***Dr. B. Pattabhi Sitaramayya** (Madras : General) : Sir, the moment I rise before you I hear certain utterances from friends. Some say "Support; others say "Oppose."

Shri B. L. Sondhi (East Punjab : General) : You will do both.

Dr. B. Pattabhi Sitaramayya : Perhaps I am doing both, because on a matter like this it is our duty not to be dogmatic. Only great men and fools are dogmatic and I disclaim being either. It is much better to string our thoughts with the thoughts of others and try to evolve a G.C.M., a thing which we learnt in our early days of arithmetic,—the greatest common measure of agreement upon such vital questions as the structure and functioning of society, which is a living organism and not a dead joint stock company with its own memoranda, and articles of association which are liable to be changed any day by paying three rupees to the Registrar. This society which we have inherited and of which we are proud to call ourselves members has been in existence for perhaps thousands of years.

Babu Ramnarayan Singh (Bihar : General): Since the creation.

Dr. B. Pattabhi Sitaramayya : Nobody knows when it started. At least I can say from the evidence that we have before us in Kautilya's *Artha Shastra* that this had attained its prefection 2300 years ago. The same problems of marriage, of crime, of punishment, of psychological complications, of political puzzles, that were treated by Kautilya in his *Artha Shastra* are before me to day without one iota of change. I would ask friends who have not read that book to read it. Read the *Sukra Nithi Sara :* read the other political works of our ancient Hindu law.

Shri L. Krishnaswami Bharathi : Kautilya's *Artha Shastra* is not unfortunately available.

Dr. B. Pattabhi Sitaramayya : It is quite available for those who have a mind to get it.

Shri L. Krishnaswami Bharathi : But I have tried my level best.

Dr. B. Pattabhi Sitaramayya : I would therefore, urge the House to look into the antecedents and the conditions of progress and conditions of evolution which have characterised the changes in what we call the "Hindu society". I do not say that we should be proud of Hindu society and Hindu culture, but after all what is called Indian culture is largely Hindu culture and what is called Indian society is largely Hindu society, and if other people have come and mixed with

*C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 543-52.

us—the Jats, the Moghuls, the Turks, the English and others—they have perhaps assimilated many of the good points in us and they have enabled us to assimilate many of their own good points, so that the confluence of these cultures over a thousand years has enriched, both in volume and in content, the stream of our own national culture. Now, we are the inheritors of this proud heritage. How shall we deal with it ? Is there a philosophy behind it or is it merely a random growth ?—an accretion of conditions, an amorphous composition in which parallel forces are in juxtaposition without organically combining with one another or is it a solution and an assimilation of all the various factors, with the merits dissolved and the demerits left on the surface ? These are the points which we have to consider. Have we considered these points before embarking upon this mighty reform? Who has initiated this reform ? When was it initiated ? In whose time was it initiated? Has it been taken up after the National Government has come into being, or is it merely a legacy of the past Government which we have taken on hand through the Secretariat ? What is our initiative ? What is our part in dealing with it ? Society, I told you, is a living organism. It has certain philosophical truths behind it. It has economic propositions before it. Take Hindu society. Have you come across any society in the world which is more socialistic, inherently and internally, than Hindu society ?

I have got fifty acres of land. I have got two sons. My two sons are each heirs to only twenty-five acres. My first son has four sons. Each boy gets only six acres. Is property allowed to accumulate in our system of inheritance ? Not at all. It is a socialistic structure of the supremost kind. You want to destroy this socialistic structure and then you want to substitute an individualistic civilisation where each man owns his property, where property is inherited not by birth, but by survivorship. What happens ? Individualistic property comes into being. Perhaps the next step will be Dr. Ambedkar's Bill on a law of progeniture for the common man. Then you will create and maintain an aristocracy. You bring into existence a class society, not a classless society. A classless society where learning and property, learning and wealth are well balanced gives place to a society in which wealth reigns supreme. That is exactly what happens in the West. That is exactly what cannot happen in the East. Here, through a system of social organisation, we have balanced the wealth and the culture, and then having brought them into existence, we have attached greater

value to culture than to wealth. Wealth has taken a subordinate place. Now what are you going to do ? You allow a lawyer to amass ten lakhs of rupees. He is the supreme master. He has obtained all the wealth that his brothers could have given him in sending him to England and making him a Barrister-at-Law. But the gains of his learning are his own exclusive property under the law which has been brought into existence by the British—thanks to their ideals. Now, whereas the other people, the other brothers, the agriculturists as well as the traders who have gone through the same process of righteous labour, have to divide their property with the educated Barrister-at-Law, the Barrister-at-Law is exempt from sharing his properties with those two brothers. Is this justice ? It is outrageous nonsense compared to the noble standards which have been adopted in our society.

Now let us pause here for a moment and ask a question : Have you appointed a Commission to go into the social, political, economic and the moral implications of the structure and functions of this society ? Have you got a report based upon a study of the psychology that lies behind this structure which has endured the buffets of time and circumstance for a period easily and admittedly, of five thousand years and perhaps which has gone back to thirteen thousand years and may be, possibly to thirty thousand years, because there are all these three versions about the age of the Mahabharata and the Vedas, about the age of our society and ancient civilisation. How is it that you don't do that. If you want to give tariff assistance to a little quantity of iron that is being imported from Antwerp, you appoint three people drawing Rs. 3000 each, constitute them into a Tariff Board, obtain a report from them based upon the evidence that has been led by all the capitalists in the country, then you consider it in the Finance Department, you place it before the Assembly and then you grant that tariff weightage. What have you done with regard to our society ? You snap your fingers at it—this ancient society, this relic of ancient barbarism, this vestige of antiquated stuff! No; you say "let us go the whole hog".

We have cast our universities after the style of London ; we have adopted our legal system after the style of High Courts in London and we have carved out Legislative councils and legislatures after the manner of the Parliament in the West, and now it only remains for us to copy the Western society. Western manners, Western social institutions and Western civic laws. Please do not mistake me. I have

been in sympathy with divorce for a long time. I have been thinking of divorcing my wife and I have also heard that she wants to reciprocate the honour. That is not the point. I tell you I am in sympathy with many of the items of this measure. But I want to tell you what kind of approach and attitude you are adopting towards the institutions of India after you have attained Swaraj. This summary, this absolutely impromptu method of dealing with this question does not appeal to my fancy, much less to my conviction. But I know that you will tell me : "Oh, this Bill has been hanging fire ever since the Congress left the portals of the Legislature." Yes, it has been hanging fire ! You however, remember that in 1938 July, the Congress passed a resolution that it should walk out of the legislature because armies had been sent to Egypt and to Singapore, which were then considered the frontiers of India. So, as a protest against that act, and as a protest against the breach of the pledged word of the Government who said that they would not send any armies abroad without the specific permission of the Legislature, we walked out and ever since we never walked in until 1946. During this time, men who were not patriotically inclined, men who were the proteges of Western civilisation, men who had spent their whole time in England or abroad, were put into a Committee and they evolved this formula for us. I got in 1944 October the first report on the Hindu Law Reform Committee while we were in the Ahmadnagar Jail. Now the main inspirer and agent of this measure was Shri B. N. Rau to whom we owe all that we have achieved in the New Constitution. He is a lawyer noted for his knowledge of constitutional law, case law, codified law and customary law and one who has done yeoman service to us. He was a Judge to the Calcutta High Court in Bengal where Dayabhaga prevails. I suppose you know Mitakshara prevails in Madras and one or two other provinces while Mayukha is the Law in Bombay. This gentleman who never had any experience of Mitakshara and who was a Judge of the High Court of Calcutta and whose knowledge of law is absolutely unquestionable has initiated this. Later on the Congress Party or the popular party never had the opportunity of discussing this question in the Central Legislature. When Mr. Asoka Roy came as Law Member, he said that he would not touch this Bill even with a barge pole. *(Shri Mahavir Tyagi* : What is a barge pole). A barge pole is a pole which is used to drive a barge on the waters.

After all, this matter has come up ; and as if we have been waiting for it in eagerness and expectancy, we have taken this up without so much as mentioning a word about it in our election manifesto.

Have you ever come across a party which draws up a comprehensive election manifesto covering all questions from China to Peru and contemplating the nationalisation of the key industries, abolition of drink and zamindaries and various other things, but never saying a word about social reform which is the central factor relating to India ?

It is not merely a piece of social reform. In India society is closely mixed up and intertwined with religion. Religion is the sanction behind everything. Now I am a most irreligious man, but I have the greatest regard for the sentiments of my neighbour. Otherwise, I am an uncultured brute. If I want to practise my heresy upon the convictions of others then I am not worth the salt that I eat. Now then, not merely religion, but economic factors, social factors and other things are intertwined. The joint family system is the creation of ages. What is this joint family system ? It is an insurance trust; it is a co-operation union ; it is a labour society.

It is a labour society where all the poor brothers toil; it is a cooperative society in which all the brothers live together—each for all and all for each, and it is an insurance union in which the widow of the deceased brother is the care and charge of the surviving brothers. This is what the Mahatma said when he opposed insurance. But I know everybody is not Mahatmaji. The Joint Hindu Family is a noble combination of these three features based upon a religious background and held together by a social bond. Can you produce an equal to it by all your labours, by all your statutes and by all the Halisbury's Laws of England ? You cannot do any more than you can produce an equal to the economy of hand-spinning which the Father of the Nation rediscovered. Permit me, with my usual immodesty, to say that I wrote a Book in 1938 which is called "The Hindu Home Rediscovered". As I entered life as a heretic, brought up in Christian traditions and western heresies, I began to discover in every festival, in every ceremony and in every religious observance of Hindu society there was something deeply religious, uplifting, inspiring and ennobling. When I lived with my sisters and my brothers, I rediscovered the Home and after twenty-five years I ventured to write this little book in which I have tried to idealise these things. I would not say that these ideals do exist in life, but when you judge an institution, you must judge it in its pristine purity, and not in its degenerated imitation. If you want to idealise any concept, popularise any institution and resuscitate it, then put it before the nation as it was conceived

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and get the consent of the nation for it. I can assure you that wherever I go, I always state the *pros* and *cons* of every proposition on this Bill. This Bill may be good in parts as the Parson's egg and it may also be bad in parts. If you say that you must do this for women because women have come to their own, yes, do it by all means, but why be in such a huffy ? I want them to come to their own, they have come to their own, and in the next Assembly I feel sure my sisters can fill half of the seats; out of five hundred, there can be easily two hundred and fifty women if they only make up their minds.

Shri L. Krishnaswami Bharathi : Will you allow them ?

Dr. B. Pattabhai Sitaramayya : I admired Rajkumariji when she said before the Provincial Model Constitution Committee that women did not require any reservations. I thought it was rather an audacious statement for her to make and a great responsibility to shoulder but I know now that they are quite able to take care of themselves. If half a dozen lady members of this House can drag us by heels and make us take up this Bill, I wonder what our position will be when there are two hundred and fifty of them here. I am not joking. If I have a voice at all at the time of selection, I may assure you that I will do it, notwithstanding Mr. Rohini Kumar Chaudhuri.

[At this stage Mr. Deputy Speaker vacated the Chair which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen)]

In this connection, I tempted to read a little statement that I have here from *Picture Post* of March 12, 1949.

"From woman comes an incessant call for equality. What does she mean by equality? From the material point of view at least, she has the lion's share. Probably ninety per cent, of all advertisements cater solely for her. Film producers say eighty per cent, of films are made for her. Fiction publishers appear to think entirely in terms of woman. As for clothes, woman has a wide choice and range at reasonable prices, while shabby, thread-bars man can only gaze for long at a few miserable suitings in some sombre shop window and think of the fantastic prices charged. With our prophetic eye, let us gaze into the future. Woman has got more than equality and man has become a spinster's spaniel existing on woman's scraps and everything is beautifully lukewarm."

I may assure my sisters that nothing will be lost by their exercising patience. I was the other day questioned for having appeared on an orthodox platform with a Swamiji from Benaras and when I saw

Prabhavati Raje—she was a wonderful woman worker—leading the audience completely with her like the Joan of Arc of old, I saw the danger of letting orthodoxy do this. On invitation I went there and I spoke for an hour, and I was taken to task for appearing on the opponent's platform. I said, "What is the use of speaking to those who are converted? I must convert those who are not converted." I fully believe in educating the people about this new Hindu Code Bill. You must not precipitate matters and decide this issue by force of majority. But whenever this may happen, it is our duty to educate the people. Let us produce the result by popular educational propaganda. After all you have not nationalised the key industries. Where has this item gone ? The capitalists struck and we had no money and we had to eat our words,—I believe in patience. One of these days things will be all right. We are afraid to do any nationalisation now. We are hesitating to abolish the zamindaries. We are hesitating to proceed with River Projects. We are hesitating to proceed with the development of cottage industries,—all because inflation is staring us in the face, and we cannot make all these necessary improvements. We are face to face with conflicts, contradictions all round. Life is not a smooth path like a journey on a railway. It is like a motor car journey upon bad roads in the midst of congested traffic. I ask you whether it is not the duty of the members of this august house to undertake the very useful and very fruitful task of educating their masters. What happened in the year 1878 when Robert Low said after the extension of the franchise. "Let us go and educate our masters." Our masters are outside. We are not the masters. The Ministers are not our masters. We can deal with them as we like. We may dispense with them tomorrow if we do not want them. That is our right and that is our privilege and our safety also. Therefore I say that this is a matter in which we should go slow. I am second to none with regard to my love for social reform. I was a social reformer even in the year 1898 when I was in the B. A. class, which was 51 years ago, long before half of the audience was born, and ever since I have sustained that interest. I very early came under the influence of the Brahmo social reformers and I have fully imbibed the reformist spirit from the Christian missionaries under whom I studied from my fourth form to my B. A. classes.

Therefore it is not what should be done on the subject that matters, but how we are going to do it. We have got to remember the political bearings as well. Tomorrow you are appearing before the Polls. What

a sad plight we were in yesterday ! I was not here yesterday ; otherwise I should have witnessed the scenes with my own eyes. I went to Alwar and returned only last night at eleven o'clock and the first thing that my wife told me was that there was a lathi charge and some people were dangerously wounded and so on. Naturally the news is exaggerated from lip to lip and from ear to ear. It is a most pathetic spectacle again that I witness today opposite to me. Generally I speak under an impulse or inspiration, but today I speak under an irritation of the sight of three women Police sitting opposite to me in the gallery. Has it come to this that this house cannot get on and the women that are in attendance in the gallery and below cannot be trusted except under the care of the baton of the women Police ? Are you really proud that these police women should arraign our sisters hereafter ? We have had enough of policemen. You know this is the most tragic development of this Bill. The Doctor will kindly note and if you cannot come to this house without the protection of the Police, women police for the women and men police for the men, then woe betide our progress, our legislation and our Assembly. I am really very sorry. I now leave the general observations and come to one or two salient points with which we are concerned today here and before that I shall submit a word about the progenitors of this legislation. I am very sorry that it should have fallen to Dr. Ambedkar's lot to pilot this Bill

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I am not sorry at all.

Dr. B. Pattabhi Sitaramayya : I know ; otherwise you would not be sitting so proudly in your seat. The doctor knows what I said about him. I referred to the indomitable, irresistible, unconquerable spirit of Dr. Ambedkar,—for good or for evil, whatever it be. We want always to say that the spirit is there and, therefore, we admire him, but at the same time, he is out of tune with society.

Shri L. Krishnaswami Bharathi : He is perfectly in tune, absolutely in tune.

Dr. B. Pattabhi Sitaramayya : I do not call him a misanthrope, but he is not a normal anthrope, that is all I can say ; the training, the surroundings, the environment, the culture, all these put him out of tune with the spirit of the nation. He is one of our best intellects, there is no doubt about it and I wish he would have health and prosperity for a long time, but all this does not mean that we accept his point

of view with which we came into conflict even in the Constitution when we passed that steam road roller law of a common civil law. Some of us resisted, though in vain, with the best of our might and main. Now I recall to your mind something that I said in the first day when this Bill was introduced in this house. I hope many people have forgotten so that they may not blame me for repeating what I am saying. In fact, I myself have forgotten the main point, but that point was that, I take it., that social reform in this country must be effected through the intercession, through the advice and through the inspiration of a Social Council we must bring into existence. I then gave the example of the Church Council of England in which the ecclesiastical dignitaries form the main element of strength and whatever they bring in by way of changes in life or law, the House of Commons accepts without changing a comma or a full-stop and that is, as it ought to be, in regard to religious or social matters and let us adopt such a course. In Germany there used to be an Economic Council which dealt with economic matters which require expert knowledge. The *Reichstagg* used to accept the recommendations of that body. Let us, therefore, go slow and deliberately so that we may know exactly where we stand.

Now I come to a few points in the Bill and I won't detain you long. The Bill contains some very good points. I like civil marriage on the top of sacramental marriage. Mere civil marriage is like executing a document in order to register a transaction between two people. It is a contract. The moment a document is written, it gives rise to strife, whether the intention is correct, whether the consideration is passed, whether it is valid in law etc. but when it is a sacramental marriage, there is no appeal against it. The old *purohit* is never called upon in life to stand up in a court of law and give evidence as to the genuineness and the *bona fides* of marriage. The marriage is there and nobody questions ; it is like the integrity of the spoken word. When the nation has preserved the integrity of its spoken word, which it has lost during the British time and under the influence of the law courts, then I say, we shall have recovered our character once again. But there are circumstances such as those under which a friend of mine suddenly discovered on the marriage platform that his daughter and his would be son-in-law were of the same *gotra*. They could not possibly give up the marriage even at least for economic reasons, let alone religious reasons. So immediately they passed through the sacrament and then went to the Registrar of marriages and registered

it. That it should be open to us to register our marriages is a great privilege and I also like that the question of the share of the property to the girls must be settled once and for all. For a long time I have felt that the daughter must be an equal inheritor of the father's property with the sons. Now I see that it is going to bring about endless complications in our social and economic structure. There is a friend of mine who has six daughters and one son and I asked the girls one after another separately and individually as to whether they would like to have a share in the property of their father. No : they said, "this will give rise to quarrels with our brother. We do not want this. We have our husband's property and that always remains with us." It is not however available to them as the *stridhana* would be available to them. *Stridhana* is a most wonderful thing, and I should like to know where in the world is there a parallel to this *stridhana ?* The *stridhana* is an institution by means of which the *stridhana* given to the girl at the time of the marriage becomes the absolute property of the girl which cannot be touched by the husband or by the father or by any human being at all. It is the reserve fund of the family which she is sure of and when her husband is very ill, she goes to the market to sell the jewels away for paying the doctor's fees and if the husband lives well and good, but if he dies, it is the last service to her Lord. Such a reserve fund is cast off and a share for the wife in the husband's property under T. V. Seshagiri Ayyar's Bill, which became law about 15 years ago, has now come to be recognized, but after the death of the husband, in equal measure with each of the sons and only as a life interest. Our law, in spite of the British people's unwillingness not to interfere with the religious institutions of this country for fear of their political stability being disturbed, has been slightly changed as has been already described by one of the earlier speakers and yet it is not sufficiently changed. The unfortunate feature is that the British people felt loathe to interfere with the social customs of this country for political reasons and therefore the law has become petrified. In every country custom goes on changing and when the King adopts a change in social customs, immediately that becomes the law and it sets the tone and the pace for all society. But unfortunately in our country for a thousand years we have not had indigenous kings and after the British came, they positively resisted all temptation to make any social changes in the social set-up. Therefore the custom has become petrified and it is that custom, that petrified custom which

we must make plastic, which we must make elastic, which we must make impressionable and therefore, mutable. Instead of doing that if we suddenly throw one stone of law against another of custom, both the stones break and that is not the way of achieving this change. Changes in this customary law must be set in motion in order to bring about social changes.

Now with regard to this custom for the girl's share I am quite willing that she should have a share, but I wish to make an alteration and that is that the moment she marries, she becomes a partner in the husband's property and that will not give any chance for the misbehaviour of the husband as it sometimes happens unfortunately. Then we go to the divorce question. I have spoken to many women. This morning four women came to me. They are good people, highly cultured, and there was also one among them who was introduced to me as one who had been abandoned by her husband, and they said, it is not only those who are happy that withheld their support from this measure, but also those who are unhappy, the unfortunate victims of man's fury and tyranny. That is not the point, I said to them. The point is this. Ninety per cent, of our marriages are exellent but what about the remaining ten per cent? They want relief. In India we marry and love, the English people love and marry and then give up their love, because what is called love at an impressionable age is a fanciful affair. One does not know what it is. In Hindu society there is a law or rule that in respect of marriage *Shree, Kulamu, Roopamu, Bandhu Shreni and Sampradayam*,—all such things should be considered. All these have to be considered before a marriage is settled. *Shree means Sampatti* or prosperity, then comes *Kulamu* or caste and position, and then *Roopamu,* that is appearance, *Sowndariya* or beauty; and then *Bandhu Shreni* or collection of relations and then there is *sampradayam* or the tradition of the family. All these five have to be carefully considered. Can a girl of eighteen—quite marriageable in age—select by judging, all these things ? Can she distinguish between one and another among these things ? No. The other day I asked my wife's sister's husband's sister. No, that is not a distant relationship, you know, my wife's sister's husband is my brother-in-law and his sister was married. But I learned that she had said something to her father before her marriage. I went to her husband's house, with her husband accompanying me into the inner apartments and there I said to him, " Do you know this girl never married you ?" He was

aghast, half angry and half surprised. "What do you mean ?" he asked. I said, "I mean what I say, she never married you." "Why ?" "She has married this, electricity, this motor-car that is in this house." The story is that the girl had said to her father "I don't care to whom you marry me, provided there is electricity and motor-car in their house." The poor girl of sixteen or eighteen, how could she judge of things and conditions ? She simply thinks, "I have been brought up in this house by my father, he gets twenty thousand rupees a year and there is electricity here, there is a motor-car, and a palatial house. I should like to have the same conditions there also." That is all. But the English mother always complains that her daughter does not "make good", that is the expression,"My daughter does not make good" she says. That is, "My daughter is not able to keep a bevy of young men round about her, dancing attendance on her, standing her bills at the cinemas and restaurants and so on." That is what the mother wants. Don't nod our head that way please. What I say is true.

Pandit Lakshmi Kanta Maitra : I am supporting you.

Dr. B. Pattabhi Sitaramayya : Not you, but the friend behind you.

Shri R. K. Sidhva : Are you referring to me ?

Dr. B. Pattabhi Sitaramayya : No, to your neighbour.

What happens in England ? The mother is always anxious that her daughter should be able to attract the attention of half-a-dozen suitors, and it is then for the parents to select one out of them to make an eligible choice for a son-in-law. But the mother always feels jealous of the maid-servant, because the maid-servant is able to make good, while her daughter is not able to. That is the tragedy. What does the maid-servant do ? At eight o'clock in the evening she changes her apron and gets into her clean smart gown and goes away. "Where are you going ?" "My lover is waiting outside, and I must go" "No, no, my son-in-law is coming now." "Hang yourself and your son-in-law by the nearest tree. My lover is waiting and I am going."

Shrimati Renuka Ray : You have, a very poor opinion of women, whether Indian or foreign.

Dr. B. Pattabhi Sitaramayya : But I have a very high opinion of my wife.

Now then, the mother complains that "that woman is able to make good and attract a number of men, but this daughter of mine is not

able to attract them." And so the mother is sorry. That is the fashion. That is the custom of the country. That is the order of the day. And there is nothing wrong in it. That is the system which has come into being. Go to Malbar and see the *Marumakkattayam* system. That is an altogether different thing. For three years you may study it and still you will never understand its secret. But it is a beautiful system, and my friend Mr. Thanu Pillai was against changing it at all.

Sir, your predecessor gave my predecessor twenty minutes after the bell. But I will take only two minutes more.

Now it is not too late to mend. We have not gone too far. It is well that we have discussed this matter, and discussed it seriously, so thoroughly and so sombrely. We have given so much attention to this subject. Now what shall we do ? Shall we proceed with the measure ? I appeal to the hon. the Law Minister to withdraw it and then put it up—and a more stringent measure next time—, with due authority and sanction from the electroate. Then I say no man dares attack us. He will be summarily shot, because I will have the sanction of the country, I will have the election manifesto ; I will come armed with that power, that strength and I will have a right to do it. Now you come without authority. You simply depend upon four women police for your protection. That is a pathetic sight for one, for any progressive Congressman to witness.

Then again, there is another thing. I trust and hope that whatever may happen—and I hope that the Bill will not be proceeded with— but if it should be proceeded with, I feel that full freedom may be given to every Member of this Assembly to vote as he pleases. If that is given, half the sting is taken away. But we have already fallen into the trap of allowing this thing to go on. Now, friends, let me warn you. This will have a serious repercussion upon our coming election. After all ... .

Shri Mahavir Tyagi : Postpone elections for another five years.

Dr. B. Pattabhi Sitaramayya : After all, remember that we are here as the representatives of the people and after all, remember that ninety per cent, of the people belong to one community, bound by one social law and one civic institution, one patriarchal system, all this is there, and people are not so intelligent as to discriminate between one thing and the other. They only feel irritated. They are already irritated by more than one circumstance. Yesterday's demonstration was not so much a protest against the Hindu Code Bill as an expression

of a certain sullenness and anger of the people with the Congress and Congress institutions. It is no use our concealing it, Wherever I go I feel I am assailed and attacked. But through my garrulity, my long-windedness, through my talkativeness I manage to get over the thing. But at the same time, I know on what delicate ground I am travelling. I speak not merely as a critic of the Government, but as a responsible member of the Congress who has given cent. per cent. support on all occasions to this Government. I say however that he is not a well-wisher who simply flatters, or conceals the truth from the Government. Perhaps you remember that last spectacle—not a scene in Hamlet—a scene in the drama of Germany where the Kaiser on the 9th November 1918 summoned all his generals and asked them to speak. Nobody would speak, they were all silent. Then he said, the Kaiser orders you to speak, and then Gen. Ludendroff spoke for when the Kaiser orders, and if he did not speak, he would shot. Just as when Queen Victoria asked Prince Albert to open the door. She said, "Dear, open the door" but the door does not open. Then she says, "The Queen of England orders you to open the door" and then the poor fellow came and opened the door. So it was with the Kaiser, and Ludendroff said, "Your Majesty, there are only twenty-four hours for you to escape across to Holland." Then the Kaiser asked, "Why ?" "Why ? because the army would not fight". The Kaiser said, "I will lead the army myself." But the army would not fight and in twenty-four hours this man was transferred. When an unpleasant truth is said, please listen to it, because there is in it nothing but the best wishes for our conjoint prosperity and success. If not on principle, if not on sound morality, at least on expediency please reconsider the position and make it possible for the people to go along with you.

*__Acharya J. B. Kripalani__ (U. P. : General): Sir, in some quarters here is an apprehension that I may talk against the policy of the Government. Though I have spoken in this house only once, yet this apprehension exists in some quarters and I want to allay that apprehension. I stand here to support the broad principles of the Bill. I do so because I do not want this Government to resign upon a side issue, upon a social issue. I want it to resign on more substantial, political and economic issues. I would rather want it to resign, for example, as any other Government in a more democratic country would have resigned, on the issue of the sugar muddle, by which infants

*C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 552-58.

of the poor could not get sugar but tons could be had by those who were prepared to pay fancy prices. On such issues, if this Government goes, there will be no regret but I do not want it to resign upon a social side issue . . .

An Honourable Member : Sugar is not more important than this measure.

Acharya J. B. Kripalani : Yet it is not as sweet.

Even then I would not have come to support this Bill but for the pressure that I had from quarters from which I could not resist such pressure. I was told at home that I must support this Bill. I said that I was innocent of a knowledge of the Hindu law, that Hindu law ran into volumes and there were many volumes of commentary and how could I support or oppose a thing which I had not understood. Then I was quickly told " I can make you to understand it."

An Honourable Member : Who was your teacher ?

Acharya J. B. Kripalani : So I submitted myself to a few curtain-lectures. I was assured that my teacher had been instructed by the highest authority in this Assembly, the great Dr. Ambedkar himself. After the curtain-lectures were over I was just as wise or as foolish as I was after my teachers in school or college had instructed me. I came to the conclusion that my teachers were more foolish than myself.

When I was a professor I thought the students would pay me the same compliment. Knowing that, when I entered the class I always said "Gentlemen, your presence is assured and after I have marked the roll call you are free to go, because I know you will not give me more credit for my learning than I gave to my teachers."

Sir, I am pledged to support the Bill and I must support it, because I know that even though my wife may be absent, when she comes back she will not only take financial but moral and intellectual accounts from me.

For me, Sir, it is not a question of religion in danger : it is a question of my home in danger. Much has been said about Hindu religion being in danger. I am afraid I cannot see the point. Hindu religion is not in danger when Hindus are thieves, rogues, fornicators, black-marketers or takers of bribes! Hindu religion is not endangered by these people but Hindu religion is endangered by people who want to reform a particular law! May be they are over-zealous but it is better to be

over-zealous in things idealistic than be corrupt in material things. It is this mentality of ours that brought about the death of the Father of the Nation. It was supposed that the murderer was a better Hindu than the person who lived according to the highest ideals preached in the Gita and in the Upanishads and whose life was lived in the light of the teachings of our scriptures. I would wish the Hindu community to divest itself of such false notions about their religion. Our religion was not made by murderers and thieves; it was made by Sadhus, Sanyasis and Mahatmas.

Yet, there is the other side of the question. A great deal of confusion has been caused, for one party says that religion is in danger and another party says that the modern religion of progress is in danger. If you do not support the Bill you are a reactionary.

I will tell you how I was converted to support the Bill. One reason I have already told you. Another reason I will give you now.

There was a woman and she whispered to another woman "Kripalani won't support the Bill : he is a reactionary."

Shri B. L. Sondhi : Were they both members of this house ?

Acharya J. B. Kripalani : They were hon. Members, not members. She in confidence told me "I protested and I said Kripalani is progressive." So I was put on my honour. You see what subtle kind of propaganda goes on. One woman tells something to another woman in confidence and she brings the story to me. Now how am I going to act ? I cannot consider myself reactionary and not progressive : I may be called a non-Hindu but for a modern man not to be modern is a greater stigma than to be without religion. I may not believe in God, but how can I not believe in the God of progress as is in the West ?

I will also tell you why the first woman said that I was a reactionary—it is a very interesting story—but only if you promise not to interrupt me by your laughter. I happened to be the Chairman of the Fundamental Rights Committee. In the Fundamental Rights Committee the proposition brought forward was that it should be the fundamental right of women not to be in purdah. Of course I am in favour of all women going without purdah—and what male will not. I admire those people who would not, but I am not one of those admirable people. I said that I have no objection to this clause going in the Fundamental rights, provided that all purdah disappears—the ancient purdah and the modern purdah. Take a round in the City of

Delhi. It is very difficult to see the face of a woman. There is always a mask. (An hon. Member : The powder) If the ancient purdah is to be removed the modern mask may also be removed because the modern mask is even more complete than the purdhah. The purdah you can take off at will, but the mask can only be taken off at home and by certain chemical processes.

Lest you may misunderstand me I tell you that I am a great believer in human equality. And in humanity I also count womanity. I want that this Bill should be passed because it gives us equality with women. I think that this Bill is in the interests of our equality. I have always thought that in comparison with women we are at a very great disadvantage. First of all, nature has put us at a disadvantage, because if you think a little, you will admit that everything that a man can do a woman can also do. But there are certain things which a woman can do which men cannot do—not even in our imagination, not even in our dreams, not even in our nightmares. I cannot conceive.

Some Honourable Members : No, you cannot!

Acharya J. B. Kripalani : I was talking of conceiving in an intellectual sense. But since you have already found out my meaning I need not dilate upon it. *(An hon. Member :* Oh, no.) But I have often been curious and have even asked women "what is this excruciating pain and what is this superb joy that you have in conception ?" and they only smile at my ignorance and give no answer. I have again asked them what pleasure they have in nursing the baby at the breast. Then also they smile at my ignorance and give no answer. In these matters I think we are at a very great disadvantage. They are great creators. Artists create inanimate objects, women create images of God, which sometimes degenerate into images of Satan. In these things, of course, nature has put a kind of block in our way and we cannot achieve equality with women. But in many other things we can achieve equality with women.

So far as the question of women achieving equality with men is concerned, they have already achieved it in India. You know that as soon as we had Swaraj, we had a woman Governor. Two centuries of independence have passed in the United States of America, and there are fortyeight States, but I do not know if even once they have appointed a woman as Governor. Of course my knowledge of history may be old and I speak subject to correction, but I believe no woman was appointed as a federal Minister. I may also say that in a country

like England, where female education is widespread, I do not know whether up to this time there has been a woman Cabinet Minister. I am not talking of the many auxiliary Ministers that we have here too—they are also called 'Ministers'—but I am talking in terms of Cabinet Ministers. So far as I know, there has not been one in England. Then I do not know whether in England and America there have been woman diplomats—ambassadors. And yet you must remember that one of our star ambassadors is a woman.

Shri R. K. Sidhva : We are proud of our women, Sir.

Acharya J. B. Kripalani : Well, Mr. Sidhva thinks that I am not proud. I am very proud of this. But I am thinking in terms of equality, not of pride. I say, "we have granted women equality, and now shall we be given some equality with women ?" I am very much oppressed because I am after all an old man. I have learned that old age is to be respected. But when a chip of girl comes into my drawing room I have to act just like a jack-in the-box and pop up.

[At this stage Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) resumed the Chair.]

I did not do that in former days. Not only that, may I tell you, Sir, that even when my wife comes in the drawing room I get up. Do you know why ? Because some boorish young man may be sitting there and he may not know the modern manners and he may not get up; just to give him an example, I rise. I want that there should be equality, because you just see, I as a male am obliged to get up when a female comes, while I know that when even our Prime Minister or the President or the Congress enters a room, I have seen young women sitting in their seats. This is a very great injustice to the mere male. My experience has been that if there is a quarrel between a man and a woman in the bazaar or in the market-place,—because I do not know about secret quarrels—or in the club, and supposing a man hit the woman, do you know what would happen ? There would be almost a riot and everybody would call the man a coward and rightly too. But supposing the man was beaten by a woman, do you know what would happen ? I think he would look very ridiculous and instead of anybody sympathising with him, he would be the object of ridicule and rightly too. Whether we beat or are beaten, both ways we are the losers. I want that this balance should be restored and there should be some equality to protect the mere man.

There is yet another thing. Not only in society are we at a disadvantage, but the law is also against us, as even our Law Minister will admit. Supposing a man runs away with a woman, the man is responsible in law. Supposing a woman runs away with a man, again the man is responsible. I have it on the highest authority, very modern authority, that it is the woman who is often the pursuer. Whether we are the aggressors or they are the aggressors, irrespective of aggression, the law comes down upon us. We are sufferers both ways. I would, therefore, request this house to bring about some equality, so that we men may be able to breathe more freely, so that if we are kicked, we may kick equally freely without ridicule, without the law coming to the help of the stronger party, namely, woman. You can now understand why I support this Bill.

Let us now go into details. There is first of all the question of property. I really do not see how, we of the Congress, who are pledged to the abolition of private property, yet think in terms of as to whom one share or the other should go. I see a curious phenomenon in this nation which I have not observed in other nations.

Shri Lakshminarayan Sahu (Orissa : General) : I want to know one thing. Is the Congress pledged to abolition of private property ?

Mr. Deputy Speaker : That is the hon. Member's opinion.

Acharya J. B. Kripalani: I think if the Resolutions of the Congress are carefully read, it will be plain that the Congress does stand for the abolition of private property, that is, accumulated private property, not private property that is in use. But as the Deputy Speaker rightly said, this a question of opinion. I find that all people here are more concerned with redistribution of existing wealth. There is no effort in this land to create new wealth. Even our Socialist friends are not thinking in terms of creating wealth, but of redistributing the very little existing wealth that we have. I am indifferent where the little bit of existing wealth goes, whether it goes to the woman or to the man provided it remains in the nation. The nation should not be the poorer for it. You will be surprised to know, but I do not mind people taking bribes even, or going in the black market. After all, wealth does not go outside India. It is somewhere with the Indian people. I only think of the morality of it which is destroying our public life and our private morals. So far as wealth is concerned, it does not matter so much. After all these bribe-takers and these black-marketers are not taking away wealth to any foreign country. If it is not my

brother-in-law, it is somebody else's brother-in-law. It is after all there. So I do not for a moment think in these narrow terms of where the existing wealth goes. I am thinking in terms of the nation. The whole attention in England and other free countries is directed to creating more wealth rather than dividing the already meagre wealth that exists there. Therefore, I whole heartedly support that a share in ancestral wealth be given to women. If they have their own share, they may be more careful about their money. It has been my experience that the expenditure of a woman is much more than that of a man. I have seen that when girls go to college and school, the mother is more careful about their clothes than about the boys' clothes. The young boys may toddle along to school walking all their way, but the young girls must go either in a tonga or in a bus even though the bus charges may come to Rs. 15 a month. So in clothes and in transport charges and in other things, woman's education costs more. This is when she is not married. When the women are married, you can look at their dress and at our dress. I have very often found at weddings that the boy looks like an idiot and the girl looks like a queen. I have seen it and anyone who has critically observed it will certify that it is so. On the road, I have also seen modern women and modern men going together. The modern man generally wears English dress and it is not on everybody that the English dress sits will. There are only a few exceptions. On most of us it looks very awkward. But the woman is in her native sari, full of colour, and even if she has not ornaments, she looks better and more respectably dressed than the man beside her—nowadays he walks a little behind her and looks awkard. Those who are not acquainted with Indian middle class society today, or are foreigners, would think that perhaps some *chaprassi* is going behind. Therefore, I say, Sir, they have their own property, we will not be bothered by these things. They will spend it as they like and I am sure they will spend it more economically than when they have to purchase things and the bills come to us. Therefore, I am a great advocate that the women should have their property share also.

5 P.M.

Then there is another point about which I am very particular. I am told that you cannot adopt a girl child. I happen to be in the unfortunate position that I have no children.

Shri B. L. Sondhi : What a pity !

Acharya J. B. Kripalani: It is a very great pity. I thought that as a Hindu I could adopt a child. But I have always had a preference

for a female child, I adopted a couple of girls, but they ran away with their husbands. I yet want to adopt a girl. I do not know why this provision is there that you cannot adopt a girl. The girls, so far as the father is concerned are more lovable than boys and the more saucy and impudent the girl is the more the father loves her. Therefore, I request that if there be any defect in this Bill it may be corrected and female children may also be allowed to be adopted.

About divorce, Sir, I may tell you that I am not personally concerned, because my marriage was not criminal, but civil. It is open not to me, but certainly to my wife to divorce me any time she likes, if she feels that I am not behaving properly. But I find that so far as provisions for divorce are concerned this Bill is more retrograde than old custom. As we have been told by Shri Alladi Krishnaswami Ayyar and a woman speaker, there is a simple system of divorce among the masses in the villages. There are no costly proceedings, there is no scandal, there are no newspaper articles. All this is avoided. I would suggest, Sir, that a more reasonable, more scientific and more up-to-date attitude be adopted in the matter of divorce.

Sir, I have a suggestion to make, for what it is worth, for the consideration of the Law Minister and this suggestion would not involve expenditure, litigation, scandal or newspaper articles. All the marriages should be for five years and at the expiry of five years every marriage would be renewable. The renewal can take place by some declaration before any village officer or his parallel in a town or city. You can after five years go and say that you do not want to separate and the marriage continues. This will make divorce easy, scientific, without scandals, without litigation and I tell you it will be most up-to-date. I make this suggestion for whatever it is worth and I tell you it satisfies all the requirements of the new religion of progress and advancement.

Shri L. Krishnaswami Bharathi : Sir, may I make a request to you, Sir, to allot one more day for the discussion of this Bill, in view of the fact that there are many hon. Members who wish to speak on it. The hon. the Prime Minister is here and he will be able to tell us whether Government would be prepared to allot tomorrow also for the discussion.

The Honourable Shri Jawaharlal Nehru (Prime Minister) : Sir, the House knows that nothing is more precious than every day and every hour of this House. We have a great deal of very important

business to get through during this session and there are not many days left over. Nevertheless, as I made it clear in the early stages, we want to give the fullest opportunity for this debate to be carried on and for as many members as possible to speak upon it. Naturally, this or any other debate, cannot be carried on indefinitely to the detriment of other public business. So Government have stated that they want to give as much time as possible, subject to the debate terminating and ending. I am perfectly prepared, on behalf of Government, to allot another day, that is tomorrow, subject to two provisos : one that the debate terminates tomorrow ; second that we sit on Saturday to conduct other business of the House.

Shri Mahavir Tyagi : Sir, may I suggest that it is very difficult for us to sit on Saturday. The Hon. the Prime Minister might just find time, because he has not to devote much time in the House. But we have to sit from morning till evening and in the evenings we have to attend meetings of Select Committees, besides attending to our other engagements. We have also to go through the various papers received by us, draft amendments and send them. Saturday and Sunday are the only two days when we can do that work. I would request you , Sir, not to take Saturday.

Pandit Govind Malaviya (U. P. : General) : I have to submit, Sir, that this measure is one in which the whole country seems to be more interested than it has been in any other measure. Members of this House should be allowed full opportunity of expressing themselves about it. So long as there is a single member of this House, no matter whether he is in favour of the motion or against it, who as a representative of the people, wishes to have a say on this Bill, we should allow time for it. If we cannot find time for it tomorrow, Government should give more days for the discussion of the Bill. I submit that it will not be fair to the people of this country or to the Members here, that anybody who desires to express his opinion about this measure should not be allowed to do so.

Mr. Deputy Speaker : The hon. the Prime Minister has already said that he will allot one more official day for the discussion of this Bill. There are a number of other Bills which have been referred to Select Committees and others whose Select Committee reports have been presented to the House. Having regard to the business that is yet to be done, the hon. the Prime Minister evidently thinks that not more than one day can be allowed for the Hindu Code Bill. So far as that matter is concerned, it is an official day and I am completely

in the hands of the Government. It is for the House to agree or to reject. I have nothing more to say in this matter. So far about twenty-seven Members have spoken and we have taken over seven days and nineteen plus five, twenty-four hours.

Dr. P. S. Deshmukh : How many are waiting to speak ?

Maulana Hasrat Mohani (U. P. : Muslim) : What is the guarantee that we will be able to finish the discussion even tomorrow ?

Mr. Deputy Speaker : I have about thirty-four names still who want to speak. The matter stands there and only tomorrow is allotted as an official day for the conduct of this business. It is for the House to consider it tomorrow. Now, as regards Saturday, it will be fixed as an official day because tomorrow is being taken up by this. You can arrange for the Select Committees to meet on some other day.

The House will now adjourn till 10-45 A. M. tomorrow.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Wednesday, the 14th December, 1949.

* HINDU CODE—*contd.*

Mr. Deputy Speaker : I have received a letter from Mr. Kripalani that it was under a mis-understanding yesterday that he sat down. I thought that he had concluded his speech, He says that as soon as I got up, in deference to the Chair, he sat down. If that is so, I would like to give him an opportunity to continue his speech, but I would request him to conclude his speech in a very short time.

†Acharya J. B. Kripalani (U. P. : General) : Sir, I thank you for the opportunity that you have given me to conclude my speech. I wanted to conclude it in a more serious manner. It appears to me that as a nation we lack a little humour and cannot penetrate to the serious purpose that lies behind the humour.

My support to the Bill is wholehearted and it rests upon very sound grounds. It rests on the foundation of the character and tradition of Indian womanhood. Throughout history they have played a very distinguished part in our life and in our culture. In ancient names we have famous names who contributed to the learning of the times. Many of them were great writers, philosophers and poets. In mediaeval times when we were down and out, when wave after wave of foreign invasion came, our women confined themselves to the home with their ancient virtues undiminished. And when wounded and disappointed we went home they soothed our wounds and kept the home fires burning. They were a consolation to us. Not only that they kept our religion alive. They kept our traditions alive; they kept our culture alive. It is in Hindu homes with Hindu women that we find our culture and our religion at its best. Even today when gentlemen change their dresses, our women do not change theirs. It is this trait of Indian womanhood that was recognized by the Father of the Nation and that was so ably utilized by him.

In our struggle for independence they stood shoulder to shoulder with us. Very often I know, they had to suffer more than we had to suffer. Even when some of them did not bear lathi charges and did not go to jails, I know the privations that they had to suffer and they suffered them cheerfully. They have always helped us in every way and I suppose it ill-behoves us to think that they are thinking of themselves alone. After all the wearer knows where the shoe pinches. They know what handicaps they are suffering from. I am

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 560-621.

†*Ibid,* pp. 560-62.

sorry that a Member from Bengal should be very enthusiastic against this Bill not knowing the conditions of the widows in Bengal. I have seen them with my own eyes.

Shri Suresh Chandra Majumdar (West Bengal : General) : Not all Bengal Members are.

Acharya J. B. Kripalani : I was talking only of one Member who is very enthusiastic against the Bill. As I was saying the wearer knows where the shoe pinches. I have no doubt that even when women get what they want, their traditional devotion to home, to their menfolk will not diminish and I have every reason to believe this. Sir, I am associated with women who may be considered as modern and you will excuse me if I give you a peep into my home life. You know and the House knows Mrs. Kripalani, but you know only her public activity.

Sjt. Rohini Kumar Chaudhari (Assam : General) : On a point of order. Sir. Can you discuss about Mrs. Kripalani who is not present in the House ?

Acharya J. B. Kripalani : Of course, I would seriously object if the Member discussed her, but I thought I had a little right to discuss her. As I was saying, she takes her full part in public life, but as soon as she is at home she is as good a housewife as any ancient woman.

Though I do not like anybody to do physical work for me, I can tell you that when I am not looking, she does everything for me, including the brushing of my chappals and the washing of my clothes. I have also had the privilege of seeing other women who are considered modern. I am acquainted rather intimately with those Members whom you see only in the House, and I have seen them in their home surroundings with their children, with their husbands, with their brother and I have no hesitation in saying that they lack none of the virtues of the old but they have added a new virtue to enrich their life, that of public activity and public work. Sir, I come from a community in Sind where most of the women are educated and according to modern ideas they may be considered even fashionable, but when I go to their homes I have marked the pathetic way they love their husbands, their children and their brothers.

An Honourable Member : Why pathetic ?

Acharya J. B. Kripalani : I advisedly use the word because you do not know that this love of theirs is a very inconvenient thing to us menfolk, However much we may try to dominate the home and

make our will prevail, they go round us in such a manner, with such devoted service, with such faithfulness, with such steadfastness, with such patience that I have yet to see husbands in the world who are more henpecked than the Indian husbands. They always stoop to conquer. I have seen these modern ladies highly educated, as educated as ourselves, and I have found that, under their skin they are as ancient as any of their ancient sisters. I think those people who are married to old orthodox ladies and who have seen their devotion, if they were to see the devotion of the new, they will be surprised to see that there has been no change at all; and these women want that certain disabilities of theirs be taken away. It is said that, if women are given inheritance, love between brother and sister will diminish. I do not think that the love of our sisters is made of such flimsy stuff. It has centuries of tradition behind. I have seen sisters slaving away so that their brothers may be educated and find themselves on their feet. I have seen them sacrificing for the family. I come from a community where there is no joint family, where as soon as the son is married, he separates and lives alone, but I know because there is no joint family, there is greater love between the members of the family [*Hear hear*] and it was manifested recently when the Sindhis had to migrate from Sind and come to India. I have seen three or four families living together in one house. If anybody had a house outside, if anybody had settled outside Sind and he was living in India, that house was shared equally with nephews and cousins and in-laws and they bear the trouble of this terrible congestion very cheerfully. Many of them have to spend large sums of money. So this family love which has persisted for centuries is not going to end because there is a little change in the Hindu Law.

As Sir Alladi Krishnaswami Ayyar has told us, this law has always been changing. It is the pride of the Hindu religion that it has adjusted itself to changing circumstances, It is true to the old, yet it takes as much of the new as it is necessary for the healthy life of the community. Times have changed. If foreign rule had not been here, our Shastras would have changed; our law would have changed. Foreign rule made these laws very rigid, and it is time that we bring in some new life and new light into them, and this Bill is trying to do that. I am sure the Bill would be put into some shape and form in Committee and that there will be no complaints. I am sure that our home life is not going to be disturbed and I am

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sure the love and the loyalty of our women is not going to diminish. That their devotion to their menfolk is not going to diminish in any way, and that the future women of India will be both true to their home and to the nation. Sir, I have done.

***Shri Gokulbhai Daulatram Bhatt** (Bombay States): *(English translation of the Hindi speech)* Sir, ever since the Hindu Code Bill has been before the House, it has agitated the minds of the people in India. Dr. Sen claims that the bill has already been before us for the last fifty or sixty years. But, in the books I have gone through in this connection, nowhere, I have been able to find a reference to any earlier existence of this Code. There was however, a Hindu Law, changes wherein have, no doubt, been engaging the attention of the Hindu society from time to time.

It was only after 1939 that we have come to know of this Hindu Code Bill in its present form. There may have been some talk on the occasion. Dr. Deshmukh had brought the Marriage Bill before this very House in 1938.

Dr. P. K. Sen (Bihar : General): May I just explain ? I said that it had been before the legislative anvil for longer than 60 years, i.e. from 1856 or 1855, but that was with reference to the Marriage Law, not at all in respect to other aspects.

Shri Gokulbhai Daulatram Bhatt : I also say that only some of its aspects were before us and before the Hindu society. In fact such issues were not facing the Hindus only, the Parsis and the Muslims were similarly confronted by them. I mean only to give you some glimpses of the history of the manner in which this Hindu Code Bill has been brought before the House and the circumstances under which the Committee called the 'Rau Committee' was set up. I want also to give you an idea as to the time-limit fixed for framing the rules and regulations concerning the social structure of the Hindu society populating over 30 crores as also the methods employed for publicity and elicitation of public opinion or for ascertaining any other reaction. Whether the Hindu Code Bill should be introduced or not, the Hindu society should be integrated or not, or whether or not there should be a synthesis of the various piecemeal legislation of the Hindu Law are not the real issues. I want to draw your attention to the fact that the Rau Committee was set up on January 20,1944; they

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 576-85.

undertook the work and got a Draft Bill ready. The public came to know of this Bill on August 5, 1944 when they were given two months thereafter to send in their opinions by October 5, 1944. Sir, I will like to point out also that only 1,000 copies of this Bill were printed by the Government of India for a population of 30 crores. Subsequently 3,000 more copies were printed under pressure of public demand.

Shri Mahavir Tyagi (U. P. : General): Were they printed in English or Hindi?

Shri Gokulbhai Daulatram Bhatt : All the 4,000 copies were printed in English. Thereafter Shri Rau had asked the Provincial Governments to get a translation of the Bill printed and distributed. Despite this translation, to my knowledge not more than 50 to 60 thousands of such copies were distributed in all in a population of 30 crores.

Now I would proceed to speak about the extent of publicity and circulation among people to ascertain their reaction to a Bill of this type which is of so much importance; which aims at integration of the Hindu society, which seeks to introduce a new way of life and which is considered to be a reformatory measure. A time-limit of two months was fixed for this purpose and thereafter the committee undertook a tour of the country. Their tour lasted for 38 days only. They did not visit all the cities and left out all towns and villages. Never did they care to go in the midst of people at any time during this tour nor approach any widow to enquire about the reason for her misery even though she may have continued to share property in accordance with the Dayabagh system of Bengal. They never went to Madras to know why our sisters and daughters were unhappy there in spite of the matriarchal system of sharing property. They did not find out whether widows were in distress in Bengal or Madras only or their fate was the same all over and, if so, what could be the possible reason for such distress. I can't agree to the plea that they are in a miserable state only because they possess no share in the property. This is not the case. Their miseries exist not solely because of having no property whatsoever. Formerly a hitch existed that the women widowed in a young age could not seek wordly enjoyments, there was hardly any justification in refusing an opportunity for second marriage to such widows. Ishwar Chandra Vidya Sagar and Malabari Saheb made efforts in this behalf and though I do not remember it clearly but I think it was in 1856 that a Widow Remarriage Act was

passed and is in force till-date. I would however like to know the number of people who availed its benefits or the nature of happiness and prosperity towards which this Act has contributed. I mean to submit that the mere legislation cannot bring a change in the society or nothing material can result by thrusting something down the people's throats from above. I wish to cite the Parsi Marriage and Divorce Act as an instance. The Act was first enacted in 1865 and Sir Cowasji Jehangir had placed a Bill to amend the original Act before this very House in 1936. I intend to go in history of that very amending Bill. Some friends of the Parsi society felt the necessity for amendment just as we are feeling at present. Kripalaniji is required to support the Bill so that his home may not be in danger. Likewise I have no desire to put mine in danger. Should I also support it for that matter?

Shri Krishna Chandra Sharma (U.P. : General): In this respect all aged men behave alike.

Shri Gokulbhai Daulatram Bhatt : Quite right. I don't wish to reply Sharmaji just now. He may continue to follow his wife everywhere carrying her coat.

Shri Krishna Chandra Sharma : But she never puts on a coat.

Shri Gokulbhai Daulatram Bhatt : My intention in this submission is to explain the course of action adopted by the Parsi friends once they had thought to reform and amend their Bill of 1865. What did they do? They set up a Law Committee from among their Panchayat. And what did this Committee do. It did no such thing as to hammer out an amending Bill, fix two months as time-limit to elicit public opinion and arrive at the decision thereafter. They had with them a questionnaire for four years which among other things wanted to know the number of Parsis who on basis of 1921 Census might be one lakh in all or at the most one and a half lakhs. The report was before them for another four years and it was only after that they had accepted the proposal. The Report was circulated in the Parsi Society again and opinions were invited on the same. These opinions did not come from Bombay. Ahmedabad or Madras people alone. Rather Parsis living in Persia and China, may be only a few of their families may have been there were consulted first on that Report and their desire ascertained. The educated persons and the lawyers always present an issue in a distorted way and people somehow accept their version

of a thing. Being gifted with a powerful faculty of argumentation, they are competent to impress other in the way of their liking. But the Report in question was circulated even among those who possessed no such faculty. Opinions were invited from groups irrespective of their being in a minority and a majority. Thus when everyone was consulted in 1936 the Bill was sent in an amended form. So the issue embodied in this Bill continued to engage their attention from 1923 to 1936 and the same was ultimately passed in an amended form.

I have much respect for Shri Rau. He has laboured very hard and has been of great help in the framing of the Constitution. But I will submit that he has mentioned this fact about consulting only a very few persons in the Report itself and thinks no harm in that. He however, did agree that the society was divided on the issue. Sister Renuka is not present here just now, but I have to say no different thing about her as well. She was speaking on the Marriage Bill in 1943-44. On that occasion she had laid a claim that if a referendum were to be held and all votes to be counted then all the young men of high spirits (Joshila jawans) will be found to have supported that Bill. She had not used the phrase 'joshila jawans'. I am merely elucidating the original phrase viz. 'the youth' used by her. I wish to submit it to my sister along with the other six or eight in this House that if they really think the Bill a very necessary one in the interests of women like our Acharya Kripalani who has come round to see in it the liberation of our women then, please, do not give it a title like the Hindu Code Bill. Name it the Post Independence Civil Rights of Hindu Women Bill or something like that. Thereafter you may proceed to give them as many rights as you please. After all we have always shown reverence and done honour to our women. Our ladies accept their husband's house as their own after marriage. Sister Sucheta has set up a house likewise. Once a woman goes to her husband's house, that house becomes her's also, she can claim her father's house as her own no more. It becomes merely her father's place from the time of her marriage. Her house is the one into which she is married. I need not go into further detail. But our sisters are wrong to think that it is a Bill of theirs only and for them only. Men have a right to it as much as the women do. I don't want to discriminate anyway between them on this score. So no man or woman should take it that the Bill concerns a particular section of the society exclusively. I shall be excused if I take rather a longer time.

So I was telling how sister Renuka had laid a claim for the support of all the enthusiastic young men in case of a referendum. In the Report submitted by Shri Rau in 1947, he said, ' Opinion is sharply divided some to the left, some to the right. Also that those in favour of the Bill were persons of brain and quality whereas the others opposing it were mere idiots, devoid of any brain, possessing no status in life and without any sense to understand the society and its complexities.' May I know who then are those who understand the society and its problems? Does Shri Rau understand it? And does the Dwarka Nath Mitter really not understand it? I have nothing to say about those people. But there is no one who could lay a claim to more work in this field than Malaviyaji, whose birth anniversary we have celebrated only yesterday and acknowledged him as an unequalled cultured man. He, though an orthodox, was always in the fore-front in the matters of reformation of the society and rights of the people. But that very venerable Malaviyaji had not thought it to be a proper way in which the Hindu Code Bill was being ushered in. We may not heed him. You all know Sir Tej Bahadur Sapru quite well. He too was second to none in wisdom or intellect. He had declared himself to be in favour of the Bill, but had agreed that it was not a suitable time to frame a Bill of this type. I go further. Sir Chiman Lall Setalwad enjoyed a status in life not less than any other man and had always taken a leading part towards reformation of the society. He never agreed to codification on principle but expressed himself in favour of giving a share to the widows and daughters without any codification. Surely it is not right to consider all persons to be wise who talk in the same vein as you do and denounced all others as mere fools who cannot share your opinions. I will request my brothers and sisters through this House and Sir, through you, not to consider the Bill in this manner. And, to my Hon. Leader, the Prime Minister, Pandit Jawahar Lal Nehru, who is not present in the House. I would like to say that I should certainly have joined with him—and I am in fact with him—in his efforts to evolve a uniform set of rules for the Hindu society and his desire to assemble the scattered provisions of Law and to form them into a system—a code—but I ask, have the public been, allowed an opportunity of expressing their views. Take the case of the small sized Parsi Community. They kept all their component parts with them, ascertained the opinion of each one of them separately and it was then only that the Bill was brought forward. Then only did they succeed for otherwise they could not have achieved

their purpose. A bill to amend the Civil Marriage Act was brought forward in 1921 with the same object as now. Why are you going to frame a Hindu code, why not frame an Indian code ? All the people live in the same country—India; they ought to have similar ways and customs. When we have decided on one common language there should also be one common code for all the people of India so that this might lead to unity and result in a united India. I want to tell you about that period. The Christians and the Muslims raised such an opposition that Dr. Gaur had to say : 'It aroused convulsive opposition from the Mohammedan and Parsi communities throughout India. I had no other go but to drop the Bill and bring a new bill in 1923.'

And he had taken that course. The Hindu society is not treated with any regard. No consideration is shown to a community which comprises such vast numbers. No consideration is shown to the counsel of Malaviyaji, leave alone Pattabhi sahib, Sir Alladi and Lakshmi Kanta Maitra. What they say is of no importance. Let alone others, here is the case of Rajendra Babu who is known as Ajatshatru. He is a living treasure-house of wisdom and intelligence and is the ornament of this country. Who has put the ideas of Gandhiji into practice and who could explain them not only to this country but also to the rest of the world. He says, 'This is not the opportune time'. There are many things in it which are controversial. Please sift them out and do not touch upon them. But, what to do? Our leaders say, 'No, this has to be expedited.' Then, let them expedite it but they should at least see to it that the views and assent of all the people are obtained. There is one advantage in particular seized by Dr. Ambedkar, I will tell you what that advantage was. When this Bill was introduced in 1948 we all sat together and decided that nobody should make a speech on it for the present. Neither Dr. Ambedkar nor anyone else said anything in particular. At that time it was thought that if the Bill was just introduced this was likely to cause satisfaction to our sisters and to others who are reformists, who want unification and codification and to those who are rational. So it was agreed to let them have that satisfaction. Taking advantage of this, however, Dr. Ambedkar thought that it had been conceded by the people generally that the Bill was all right. No sir, we did not study some of its clauses some of its provisions. But, since our leaders said, 'Let it move forward a bit', we said ' Very well, take it forward. Bring it in the Bazaar'. Thus

it has come into the Bazaar, it has been paraded in procession and here we are seeing it. I should like to say that if all the debate of ours had taken place before the Bill was sent to the Select Committee, it would have done a lot of good to Dr. Ambedkar and our friends of the Select Committee. They would have come to know what shape should he given to the various things. Now, we are faced with a sort of conundrum. Our confusion lies in this that if we say that it should again be sent to the Select Committee, it is not known to what a labyrinth of rules and procedure we might be landing ourselves. If, on the other hand, we say that we should hold it up for the present there is another sword hanging over our heads. Now, what are we to do? We are in a pretty fix and it is for our leaders and Providence to take us out of it.

I was saying that we were not called for to introduce this measure at this particular juncture because we have not yet obtained the views of the Hindu society. Whatever Hindu society has been consulted belongs to the towns. And how many people were consulted ? There are 121 individuals and 102 institutions who have filed written statements or given evidence. Now, shall we say this is the opinion of the Hindu society ? In case you want to know the opinion expressed by Mr. Mitter, and that too in regard to each part separately I am prepared to speak to you about it. Opposition has been offered to it every were barring Madras. Those belonging to the Dayabhaga School opposed it in Bengal. There is opposition from the Bombay side. Because of this antagonism and other causes it has come to face opposition. If, in spite of this opposition we were to say, 'No', what the minority say is along the truth and you will have to accept it. it is rather hard. The Hindu society should be unified. This should certainly be done on the basis of a system. How can I say the women, our sisters, should be given no share? But let our sisters themselves be asked to say if, after they have received their share, they would still have any love left for their parental home. How much love would be still left? Just ask one of the reformed women of to-day where her father lives, where her brother lives. They keep to their own cottage, homestead or mansion and do not so much as greet a relative. Such are the reformed people of to-day. Hence if it comes to shares what will become of us? However what I wanted to say was that in spite of all these objections we are faced with the minority issue. Even though the view of everyone have not been obtained we are being

treated to that kind of pressure. We are urged to accept it under duress. They fail to see, however, what complications are bound to arise later on.

Hence, I want to say. kindly find out a middle course. Only a middle course would give satisfaction to us and to society and cause the unrest to subside. Just as Pataskarji observed to day we are already up against a number of difficulties. Why create another big one at this juncture? Why plant another thorny bush and thereby spoil the path rendering extra labour necessary later on for its clearance? Why should you act in that manner? Kindly attend to some other task and let this one be postponed for a year or two. I should like to suggest to my sister—veritable goddesses as they are—to those of them who have welcomed this measure that in the interests of the country, they should take upon themselves to go to our Jawaharlalji and appeal to him that this means my be held up for one or two years. This would help in many ways. But as it is, their line of thought is that if this Bill is not passed now or at any rate in 1950, it may never be passed, because those who come hereafter would not allow it to be passed. But let me tell you that even if you pass it to day you should know what is going to happen later on. Such a type of people will come in to fill these seats who will say, ' As our very first duty let us set right this Hindu code that has been enacted'. Hence. I beg you kindly to prevent this if you can. If however, you cannot do that then, my advice is : 'Not to the left, not to the right, come in the middle; find out the golden mean. This alone can satisfy the community.

Secondly, I wish to refer to what Dr. Ambedkar said in reply to a point of order raised by Mr. Sarwate to which, Mr. Deputy-Speaker, you also added your support, viz., that this Bill is going to be applicable to the provinces only and that if it is sought to be made applicable to the States it will be sent to them, it will be circulated, before it is decided what is to be done about it. Dr. Ambedkar made the following observation :

> "When the occasion comes for the extension of the bill to the Indian states, no doubt this Legislature, when a proper motion is placed before it, or the Government of the day will take note of their wishes and intentions and the States which have come into the Indian Union will be consulted."

If this is the position then what is passed to-day will be sent to the States after six months and by the time the states enforce it you will have gone still further ahead. The States' people who are already somewhat backward, will be left even further behind. You should

therefore, kindly keep that point in view and see what can be done about it.

I may be permitted to say that the mode of obtaining public opinion was not perfect. I have already said that. It took us two and a half to three years to frame our Constitution and even though we have proceeded with the utmost caution, there are so many people who say it is no good. We consulted the Provincial Governments, supplied them copies of the Draft constitution and it was discussed there in their legislative assemblies and cabinets before they sent us their views. As you know, the Rau Committee never sent their draft report to any provincial Government. This is how it has come up. Hence, I wish to point out that the opinion was not taken fully and properly. The basis of your claim is also not sound. I am in no doubt on that score. Renuka Bahan remarked, ' Half of the country will be with it, but the report of the Rau Committee says Says.' ' The society is very much divided.' In view of this whom should I rely upon? Should I rely upon those who gave their report in 1947 after investigation or upon Renuka Bahan's statement of 1944?

Mr. Deputy Speaker : Several other Members have yet to speak. Kindly conclude it.

Shri Gokulbhai Daulatram Bhatt : I shall be closing in five or seven minutes. I should say a few things more if you permit.

Mr. Deputy Speaker : Just as you please. You have taken thirty minutes already.

Shri Gokulbhai Daulatram Bhatt : I shall speak just a little more and then close very soon. I must say that it is the Hindu Community alone which would quietly take whatever blows you might give it. Look at the Muslim community. Did anyone have the courage to draw up a code for them? Why not unite the *Shia* and *Sunni* schools of thought? Could you just dare meddle with the law of the Christians ? Or could you dare tackle the Parsis? This poor community alone must stand every thing. Is it because you think it is dead? Dr. Ambedkar say he belongs to the *Shudra* caste. I hold him very high. Someone gives him the title of Muni (saint), another raises him to the rank of Rishi (sage) whereas he himself says he is a Shudra. Then let him be Vishwamitra. Whatever you are, but, of course, you are a wise man. Why nurse that inferiority complex? He says, '*Smritis*' continued to be prepared. The Brahmans went on writing. What else had they to do after all? What is the work being done by your department?

That was exactly what the writers of *Smritis* did. It was a department which amended laws and rules from time to time. Just as you prepare and put up amendments to laws they did likewise. I however do not wish to go into this question, Nor do I wish to go into other extraneous matters. Our sisters say this thing has come to be included in the fundamental right and that those who are opposing it have not been able to comprehend the fundamental rights. "You do not understand the fundamental rights," they say. Does it form the fundamental right or even state law? Does the Hindu Code constitute State law or is it personal and private law? If you were to bring forward a bill in regard to an Indian Code, I could say with authority nobody would oppose it, but to-day you are out to frame a Hindu Code and to make a change in the Hindu Law. But personal law is not State law and therefore it does not apply. Gaur had remarked, ' it will only be *Avtar* who might come someday and bring forth this Code.' Shri Gaur is perhaps sitting in Nagpur now and he must have been gratified to learn that the *Avtar* has manifested himself at last and that the Hindu Code Bill has arrived.

Shri Mahavir Tyagi : Disgraced persons.

Shri Gokulbhai Daulatram Bhatt : Saying a few words more I wish to conclude my speech in a short time. It is said that brothers and sisters should be equally treated. Shri Kripalani has left, why would he hear what the others say? So I wish to say why this double right should be given to the sisters. She will take her *stridhana* from her father's place, will take all the dowry given to her by her father, will take her personal share and apart from this all her share in the husband's property is still there. Then how the sisters have become so selfish? The women are themselves prosperity incarnate, why do they want more of this wordly wealth? Shrimati Kamala Chaudhuri has given out that without doubt wealth and prosperity will automatically flow back to the wealthy and prosperous. Women are themselves wealth and prosperity incarnate, why do they want to add to their prosperity ? With the slight illusion and fascination they still possess they have been able to capture and subdue the whole world, if the illusion and fascination would increase then nobody can foretell what would not come to happen. If the wealth *(maya)* will undoubtedly flow back to the wealthy then subsist Nature and Nature only in this world and exclude Man therefrom. If by this exclusion of Man the *maya* is able to subsist, then do accordingly.

Our friends from Travancore and Cochin are far advanced but they should also keep in mind that a solitary swallow will not make summer. They should make the villagers also pace with them and if they also are to be taken along then kindly give this Bill more publicity and explain it to them the various implications and then the purpose will surely be achieved. There is not the least doubt about this fact. At places it is being said that by passing this Bill a reversed state of affairs is being created, and to some extent this allegation is right also. Let the water trickle down its natural course and if by spurning the minority view point here you would reverse the state of affairs then today you may be able to do so; but in future a time will come when such drastic changes would be made therein that would stun you speechless. The inevitable must come to pass. I do not like to go in details.

I wish to say one thing more that our *Smritikar* (law giver) *Yagnyavalkya* has gone a step ahead of *Manusmriti.* Even I do not want to enter into the controversy as to which of the *Manus* has been the author of this *Manusmriti* because there have been a number of Manus. But Shri Vigyaneshwar, the famous annotator of Yagyavalkya *Smriti,* who has written the *Mitakshara* annotation and the annotators who have written *Dayabhag* and *Mayukh* annotations have propounded different and distinct opinions. I do not want to quote all the illustrations. But they have laid down that if a woman be not given her *stridhan* then she also should get a share in the property equal to that of the son. This has expressly been mentioned. I wish to say with all the emphasis at my command that in our Smritis a mention is made of *stridhan.* The people of England have not yet codified their law. I wish to inform you that according to the English Book of Prayers the prohibited degrees of relationship for marriage were determined in 1565 A. D. The same continued to be in force till 1915 A. D. and in 1915 A. D. only one alteration was made in the prohibited degrees of relationship viz., till now a marriage could not be consumated with the wife's sister. So I wish to say that we have stepped far ahead as compared to this. There they took so many years to change one degree of prohibited relationship but here according to the Civil Marriage Act the people have been permitted to enter into matrimonial alliance with the second cousins also. Those who like many take recourse of Civil Marriage, but why you want to impose the same restriction on all others. The Civil marriage Act provides for marriages

with second cousins. Those who wish to adopt the system may follow it. While framing this Bill we should keep in mind the Principle of Eugenics also. It is wrong to consider that our *Smritikars* (annotators) have mentioned nothing at random. Our *Smritikars* were past-masters of the Science of Eugenics. They were not common people. They were highly learned and well informed persons. Whatever doctrines they laid down were perfect in all respects and were propounded after mature consideration. Their decrees were so perfect that it was not at all deemed essential to effect any changes in them say after 6, 8, 10 or 12 months. Our *Smritikars* were very wise and intelligent. Deep meditation of hundreds of years is essential to suggest any changes in what they have written. Undoubtedly you may make suitable amendments there in, because from time to time suitable amendments have been made in these *Smrities*. But we must consider this fully well whether by introducing these changes the society will be benefitted or put to loss.

Shri H. V. Kamath (C. P. and Berar : General): Are the Hon. Members of this House not intelligent?

Mr. Deputy Speaker : Please go on.

Shri Gokulbhai Daulatram Bhatt : I am not so intelligent and learned as Shri Kamath is. I do not allege that the Hon. Members here do not possess intelligence. Everybody has got his own intelligence. Everybody can think. But I say that I will not accept lying down all that Dr. Ambedkar says in a manner that great men have great views. Similarly if any Pandit (scholar) were to come and say that whatever has been done for the untouchables is not at all justified, then also I will not take his word for granted because I do not believe in the maxim that great men have great views. But I was submitting that whatever our Smritikars have done, have done after fully taking into consideration the future of the society. It is quite true that these Smrities were codified according to the then needs of the society. Today our society consists of numerous castes and sub-castes, the people belong to different sects, they believe in various doctrines, there are Sikhs, Jains, Buddhists and followers of other schools of thought and so on. They are divided up into numerous religious sects. It is not an easy task to inter-blend them in a single system.

Sir, I will now take only a little more time. I had just stated that the honourable Dr. Ambedkar said, “Custom will eat into the code

and therefore custom should not prevail" On the other hand he says that the law governing the succession rights of Rulers and jagirdars, which should not be there, should continue; and when there is a question of usages and customary rights, he says that this should not be there.

There is the point of succession. Another point is that of adoption where he says that customs and usages should not be allowed to continue. Both these things are untenable. You had better put an end to it, make it uniform or abolish it outright. Sir, I would again bring it to your notice that petty conferences are being held at other places on account of which I am feeling some difficulty in speaking.

An Honourable Member : He is repeating the same arguments.

The Honourable Dr. B. R. Ambedkar (Minister of Law): It is now one hour since the gentleman has been speaking.

Mr. Deputy Speaker : Order, order. The best way of asking him not to speak longer is not to make noise but to leave him alone so that I may ask him to complete his speech early. The Hon. Member knows that many other Members are anxious to speak. He has already taken more than 45 minutes.

Shri Gokulbhai Daulatram Bhatt : Shri I am indebted to you. So I was telling you that on the one hand you say that the custom is no problem, these customs and usages should continue; on the other, if this is acted upon it would tantamount to kill the Hindu Code. I do not want both these things. You ask as to grow more food. If we have to grow foodgrains in all the land in our possession, be it a garden or beautiful lawns, we must cultivate all these lands. On the one land; you want that your lawns should also remain intact, and on the other, you desire that more foodgrains should be grown. Such a course does not appeal to me.

You know what is custom ? We should understand family customs. village customs and national customs—'*Shastrad ruri balysi*' (Custom overrides the sacred laws). What is the meaning of *Shastral*? By referring to shastras again and again you people would be thinking that I am raving like a maniac. The *Shastra* is a science, a treatise and a law. That is a Smriti. After this you will not like to appreciate any such thing. So he will not like to involve himself in any such controversy which the divorce problem has created. A man and a woman sit in a *Panchayat* and say that they want to get rid of one another. They say that they have enjoyed the pleasures of the world and want to go to some other place. They will not involve themselves

in such a botheration of having a recourse to the District Court or High Court for this purpose. If they behave in such a manner the reverse will be the case.

When I go to the village, I will tell the people that the Hindu Code Bill has been framed in such a manner and it contains a provision of such like matters. Those people will then say that they do not want this in such a form. The existing village Panchayats are quite good and these should be allowed to carry on as they are doing at present and they do not want to involve themselves in such complications of law which will enable the lawyers to thrive and the poor to become poorer. With your blessings, all these things abundantly exist in the Hindu law.

Sir I was just saying what is likely to be the net result of all such things. I cannot touch here every aspect because I have not got sufficient time at my disposal that I should refer to all such things, as many of my brethren are desirous of speaking on it.

So Sir, I was just going to say that this is a question of vital importance. I would advise my honourable friends sitting here who have expressed their opinion in favour of its being passed to consider it once again more carefully. This is not the time for hasty action. You are liable to be called to account by the people for your doing of it. With all due respects, I would also like to request our esteemed leader the honourable Pandit Jawaharlal Nehru that this question which has been brought up before us is so vital and of such a fundamental importance that we should necessarily consider over it most carefully. All the more necessary that the public opinion should be elicited in this matter. My honourable sister Shrimati Renuka Ray had referred to a referendum. In this connection I would like to say that as the elections are likely to be held in the near future, you can at that time elicit the opinion of the measses whether or not they want the Hindu Code. You can place it before the public that we are framing a Hindu Code Bill of this nature and whether or not they like it. If you are able to enlist the opinion of the people on this issue, then you are at full liberty to pass it in this House. This should be agreed upon as the basis of referendum. I am not a man to be swayed over by the newspaper reports. The newspapers are given to the publication of exaggerated versions of such matters simply to promote their circulation. I have got no personal grudge against the newspaper men. I cherish solicitude for them and have every sympathy with them. But so far as the question of holding a referrendum is concerned,

I would like to tell my honourable sister Shrimati Renuka Ray, who is not present here at the moment and other sisters that as elections are likely to be held after a few months, this question can then be placed by them before the public. You can tell the people that we have framed such a Hindu Code Bill and want to pass it. If the people vote in your favour on this issue, then we can surely pass it here.

Thus, I would like to request the Government to consider over this matter and not to pass it at this moment. To conclude, I would say this much, "Not to the left, not to the right, come in the middle to find out the golden mean."

Shri R. K. Sidhva (C. P. and Berar : General): Sir, My friend has mentioned the Parsi Matrimonial Act. Will you kindly give me five minutes to explain?

Mr. Deputy Speaker : I am not going to allow it because he did not criticise it in any manner. He said the Parsi Marriage Bill was sent round to all persons all over the world. He used that as an agrument in the case of this Bill which involves three hundred millions people. Therefore on that ground the Hon. Member cannot claim a right to speak.

Shri R. K. Sidhva : No. Sir, He has made incorrect statements.

Mr. Deputy Speaker : Then the Hon. Member must have brought it to my notice. We cannot start an argument over every matter.

Shri R. K. Sidhva : Have I no right to speak on this Bill ?

Mr. Deputy Speaker : Every Member has a right to speak, I have absolutely no doubt about it. Only time does not seem to permit.

* **Dr. Bakhshi Tek Chand** (East Punjab : General): Sir, the debate on the Bill has gone on for several days. Both sides of the question have been put before you. I do not want to repeat the arguments which have been given on the one side or the other. I have only two submissions to make, one to the supporters of the Bill and one to opponents of the Bill and after that I have to place one suggestion for consideration of the House for such changes as I think should be made in the Bill to make it acceptable to all or at any rate to a large part of the House and also of the country. I will ask the indulgence of the House therefore for a few minutes to permit me to place my views before it.

The first suggestion that I have to make to the opponents of the Bill is this. They say that this House is not competent to touch the

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp.585-99.

provisions of Hindu law, because it is a matter of a time honoured religion which has come to us through centuries and that it is only a *Pandit Parishad* which will be competent to effect any change. I submit with great humility that is a position which cannot be accepted for a single minute. Hindu law, as has been pointed out by Sir Alladi Krishanaswami Ayyar and others, has never been static. It has changed from time to time. Each time when the structure of society changed a *smritikar* appeared—a sage, a rishi, a muni—and he made such modifications as were suited to the times. This process went on for centuries until the country came under British rule. During this period, the only changes that could be made in the law were either by judges who were to interpret the law or by the legislature. No new sage could appear with the authority of a Manu or a Yagnavalkya or a Viswamitra. Either the judges who were duty bound to interpret the law as they found it in the *smritis* or *nibandas* could interpret it or the legislature had to intervene. It is idle therefore to contend in the year 1949 that the legislature is not competent because it consists of all types of people who are not learned in the smritis. That is a argument which I submit, should be rejected forthwith. If you see the course of events that the legislatures of this country have followed for more than a century, you will find that whenever it was found that the Hindu law or any branch of it was found to be defective, legislation was introduced. It began with the Removal of Sati Act in 1829 under the guidance of late Ram Mohan Roy The custom of *sati* which was considered to be a part of Hindu religion, but which was not really a part of it and which was an abuse, if I may say so, of the principles of religion, had to be done away with and for that purpose legislation was introduced as far back as 1829.

Mr. Deputy Speaker : There is too much of whispering going on. The reporters are unable to take notes. I am also not able to hear.

Sjt. Rohini Kumar Chaudhari : The Speaker's voice is indistinct. He has got two mikes close to each other. We do not hear him properly either.

Mr. Deputy Speaker : He is speaking before the phone. Each seat has been converted into a small phone. What am I to do?

The Honourable Member will kindly resume after Lunch. The House is adjourned till 2.30 p.m.

Shri A. Thanu Pillai (United State of Travancore and Cochin): May I make a suggestion ? (Interruption). My point is this.

Some Honourable Members : The House has already been adjourned.

Mr. Deputy Speaker : You are late. The House has already been adjourned

Shri A. Thanu Pillai : I am sorry. I did not know.

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

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The Assembly re-assembled after lunch at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

Dr. Bakhshi Tek Chand : Sir, when the House rose, I was referring to the Acts passed in 1829 under the inspiration of Shri Ram Mohan Roy for the abolition of *sati.* Now as we all know, it was argued at that time that *sati* was a part of Hindu religion. It was said that *sati* was one of the essential features of our *dharma* and any interference with it would be an attack on Hindu religion. But the sense of the community prevailed, the law was passed and *sati* ceased to exist. This custom, as I was saying, was not a part of Hindu law. It was an innovation which has been introduced during the, what are called dark ages, or the medieval ages. Luckily that was removed by legislative enactment.

After that we had the 1850 Act for the removal of class disabilities so far as inheritance was concerned. If a person or the heir changed his religion the right of succession was not affected. That was the second great change that was made in Hindu law. Then came another very great reform in 1856 when the Widow Re-marriage Act was passed. For centuries it was believed that the Hindu religion did not permit the re-marriage of widows.

Shri Mahavir Tyagi : May I know. Sir, if the Treasury Benches are represented.

The Honourable Shri K. C. Neogy (Minister of Commerce): Government is one and indivisible and so long as there is one Minister present I think he is competent to represent the whole Government.

Mr. Deputy Speaker : I think it is always a healthy ambition for Members on the other side to come and sit over this side.

Dr. Bakhshi Tek Chand : As I was saying, widow re-marriage was considered to be an essential feature of Hindu religion and any suggestion to repeal that law or to enact a permissible legislation which

would enable a widow to remarry was opposed tooth and nail. But under the leadership of Shri Ishwar Chandra Vidya Sagar and other leaders of that day public opinion asserted itself and this great disability under which Hindu women suffered was removed by another piece of legislation. Well, the Hindu religion did not come to an end by the enactment of that legislation.

After that there have been numerous other Acts by which Hindu law has been modified by the Parliament or the Legislative Assembly of the day. Most of you will remember the great agitation which took place in 1890 and 1891 when the age of Consent Bill was introduced. At that time the cry was raised that it would be a gross interference with the Hindu religion if a legislature consisting of Hindus, Muslims, Christians and dominated by bureaucrats were to legislate in regard to a custom which permitted intercourse with a child wife below the age of twelve. If you have a recollection of what appeared in the papers, even advance papers like the *Amrit Bazar Patrika*, you will see in what kind of convulsion the Hindu society was at that time. But again the legislators persisted and that Bill was passed a Bill which ultimately has culminated in the last session by almost unanimous vote of the House in the further amending Bill which our friend Pandit Thakur Das Bhargava introduced and which if I remember aright was unanimously passed by all sides of the House. At that time none of our friends thought that this Assembly was not competent to legislate with regard to a matter which was considered to be an essential part of the Hindu religion. Coming to more recent times, you will find that in 1916 the Indian Legislature passed what is called the Dispensation of Property Act, an Act which has had the effect of repealing the law which has been laid down by Privy Council in what is known as Tagore *versus* Tagor case. In that case, following certain texts of the *Smritis* the Privy Council had ruled that behests or gifts in favour of a class of persons who are unborn on the date of the gift were void according to Hindu Law. That had continued to be the law for about sixty or seventy years. It had been suggested that that was a wrong interpretation of the texts. The matter was examined and it was found that certain texts according to their literal meaning could only lead to the conclusion at which the Privy Council had arrived. This was found to be a great handicap and a great injustice. Therefore the legislature again intervened and by a unanimous vote of the House, it passed that Bill in 1916.

After that came what is called the Removal of Disabilities Bill. Under certain texts of Hindu Law as enunciated by some of the *Smritis* if a person was suffering from a physical disability, if he was blind, if he was deaf and dumb he was not entitled to inheritance. Many people thought that whatever the meaning of the texts might be, this was a great hardship. If out of five sons, one was deaf or was blind or suffered from some other disability, it was more necessary in his case that he should get a share in the father's patrimony rather than the persons who are physically fit and capable of earning. Well, that text might have been of some validity or of some utility at a time when in ancient times the structure of society was such that in order to increase the family wealth it was necessary that all should work. It had become obsolete and the Hindu community revolted against it and the agitation was such that the Indian Legislature passed this Act in 1928 after which persons suffering from physical defects were allowed to inherit in the same way as persons who were physically sound. This was another inroad into Hindu Law.

Then came another and very important Act, Act II of 1929 by which certain classes of people, who till that time had been ruled by the courts as not entitled to succeed to property, were allowed to succeed. According to the text of the *Mitakshara* school, it had been ruled by the courts in India and ultimately by the Privy Council that there were only five classes of females who were entitled to succeed, because these five were mentioned in *Mitakshara.* The Bombay school was of opinion that this list was not exhaustive but it was only illustrative and the great commentator Nil Kantha and his followers held this practice was due to a wrong interpretation of the *Mitakshara* in Northern India. Well, a Bill was introduced in this Assembly and after a great deal of deliberation that Bill was passed and the daughter, the sister and the sister's son and so on were all included in the list of heirs. That again was a great change in the structure of Hindu Law particularly in Northern India.

You are all aware of the Sarada Act. I will not repeat that. At that time also it was argued and argued seriously in this House also that fixing a minimum limit for marriage was an interference with Hindu religion. Well, the opposition did not succeed and the legislature persisted and the Bill was ultimately passed.

After that, we have had what is known as the Deshmukh Bill. That Bill of 1937 had a great effect : it effected a very great change in

Hindu Law of succession. In areas governed by *Mitakshara* school, when there was a joint Hindu family after the death of one co-sharer, if he left no son the widow was not entitled to any share. She was dependent upon the brothers-in-law or the husband's father and the other coparcener, dependent entirely upon their mercy for their maintenance. She was to receive only food and clothing and nothing else; mere maintenance only. Under that law it was enacted that childless widows would be entitled to the same share of the property as her husband would be entitled to and if she so liked, she could even ask for the property to be partitioned. It was held at the time that Hindu women in a joint family being entitled to sue for partition was considered to be repugnant to the fundamental principles of the Hindu Law, but the Legislature again made this change, a change which was warranted by the changing times, by the rising consciousness not only among women but among the men in this country, among Hindus who wanted that this should be done to their sisters and mothers. Now, at that time also there was a great deal of stir in the country but ultimately that stir also died down. Twelve years have passed and we cannot say that Hindu society in any way has crumbled to pieces or that Hindu religion has been attacked in a very vital matter so that it is now going to pieces.

I come now to more recent times. In 1946, shortly before the present Assembly came into existence, a Bill permitted marriages among sagotras was passed by this Legislature. That Bill did not interfere with the prohibited degrees. Even though persons were living in different parts of the country and did not belong to the same caste, yet because they belonged to the same Gotra according to some technical meaning of the texts, the marriages could be invalidated, Such marriages, even though performed in several parts of the country, their validity was in doubt. That was again an enabling measure which was passed in 1946 and to which no serious objection has been taken.

Now, I would ask Hon. Members to bear in mind what we did in the last April session of this Assembly. My esteemed friend, Pandit Thakur Das Bhargava brought a very simple Bill consisting of one section only, but a Bill which was of a most far-reaching and important character. By that Bill it was enacted that notwithstanding any text of Hindu law or any custom or usage having the force of law to the contrary, a marriage between various castes of Hindus would be deemed to have been validly made. That was a very great step, a

step which permitted inter-caste marriages and which removed such restrictions as one must marry either in his own sub-caste or, at any rate in his caste. That was the measure which was passed by this House unanimously, and so far as I remember at the consideration stage the only voice raised against it was that of Dr. Ambedkar. All other Members orthodox and un-orthodox, person governed by *Dayabhaga, Mitakshara,* by the *Mayukha,* person governed by tribal customs and everybody supported the Bill. Dr. Ambedkar : of course accepted it on a very narrrow ground. He was entirely in favour of the principle of the Bill but he thought that as this Hindu Code which was a very embracive measure was before the Assembly and therefore we should have a comprehensive measure that was a very technical type of objection. Otherwise we all unanimously supported that Bill and it came sometime late at the end of April. Now I will ask my orthodox friends who say that Hindu *Dharma* is in danger as to what has become of that. We were saying when the Constitution was under consideration that we want to have a classless and a casteless society. That is contrary to certain texts of Hindu law which have been in force in various parts of the country for centuries, but still the Bill was enacted and it is a part of the law of the land. At that time, if I may be permitted to say so, nobody took an objection that this House was not competent to deal with it because it had been elected only for the purpose of framing the Constitution or for the purpose of carrying on the day to day administration. Abolition of caste system in the matter of marriages was surely not part of the day to day administration of the country. It was a very vital and a very material and a very substantial change in Hindu law of marriage, the law which prevails in some form or another in all the Schools from Kashmir to Kanya Kumari and from Bengal to Gujarat but we all did it with open eyes when the Bill was passed and Mr. Munshi who was here at that time said that the Bill was a far-reaching one, though the Bill is a very short one; it is a very big change and a very important change. The whole House cheered him at that, I will ask my orthodox friends, the opponents of the Bill where was their regard and their enthusiasm for Hindu Law or Hindu *Dharma* at that time? I submit, therefore with great deference to my orthodox friends that this cry which is being raised, that this Bill which is now before the House is all attack upon the Hindu religion that the foundations of the Hindu religion will be undermined, that the whole fabric of Hindu society and Hindu culture will crumble to pieces or that this House is not

competent to enact a measure of this kind simply because it does not have many learned pandits or that the Members who are here were not elected for a specific purpose. I submit with the due deference that there is no force in this objection and I would most respectfully ask my orthodox friends to consider the history of the legislation which I had placed before them the various measures which we ourselves have passed in recent times and to consider that they might attack the Bill upon other grounds, but to say that this House is not competent either being merely a legislative assembly or that we have got no mandate of the country to look into this measure to enact or consider it and pass it, I submit with very great deference that that argument is not sound. I will ask them to examine the Bill upon its merits to accept it or to throw it out. It is one thing to say that the Bill has not been sufficiently considered; it is one thing to say that there are provisions in the Bill which require further discussion and examination; it is one thing to say that the bill requires to be re-cast in certain matters. Even today as I suggested and as Sir B. N. Rau in his original report of the Committee said perhaps it will be advisable to take this reform of Hindu law in parts. I can quite understand that, but when every morning—I hope I will be pardoned for saying so— every mail has been bringing in letters during these months, letters and reprints from speeches delivered by persons, resolutions passed by the *Dharma Sangh* and this society and that society, all giving the opinion of this great man and that great man and saying that this Assembly is not competent to deal with them : I with the greatest deference and in all humility submit that that is neither correct nor logical nor reasonable, and therefore, I would submit to my friends, the opponents of the Bill not to press those arguments but to look at the Bill very reasonably, rationally and with a proper point of view.

That was my submission to my orthodox friends and now I may be permitted to say a word to our friends, the supporters of the Bill.

Shri H. V. Kamath : Are they heterodox or orthodox?

Dr. Bakhshi Tek Chand : Well let everbody decide it for himself. Now the position is that this Bill was introduced. It had as we know a very brief discussion at the first stage. When we met in the Select Committee we were given only six days to consider this important Bill and when certain objections were raised by Members of the Committee to some parts of the Bill, we were told that the principle

of this proposal goes against the fundamental principles of the Bill which have been accepted by the House when it passed the first reading and therefore, we the Members of the Select Committee who wished to move amendments to those vital matters are out of court and we were out of order. We submitted to the ruling and we had only six days to discuss this Bill in the heat of July and we did the best that we could under the circumstances within the short time at our disposal and within the narrow limits which were laid down by the Hon. Law Minister at that time. That was not only the Law Minister, but there were certain enthusiastic Members of the Select Committee who thought : "Well now is the time we have got this Bill; let us push it through in this very session and before the month of October or November arrives, it will be a part of the Statute Book." Several objections and several arguments were given : 'Let us wait for a few months.' Ultimately the Select Committee decided to proceed with it on a majority of two.

Things have gone in such a way that within one month this Bill could not be put on the Statute Book. Things have dragged on due to circumstances much beyond the control of us, beyond the control of the majority of the select Committee. One point which I raised in the Select Committee and one which I also dwelt at some length in my note of dissent and which I ask the permission of the House to repeat was that this Bill is a very half hearted, and a very, if I may say so, a very truncated measure. I fully endorse the view and I have no hesitation in repeating it, that the time has come when we must give full rights to our sisters and our daughters; that is to say, the time has come when we cannot allow the old texts to continue, or their interpretations which have been given by the British Courts that a woman has not got a full estate, that a woman is not entitled to succeed to this type of property or to that type of property and so on and so forth that must go. In the first place I maintain, and I have always maintained it that all that is against our original Hindu law. I maintain and I hope to show; if the Hon. Deputy Speaker will permit me a few more minutes, that this theory that a woman's estate is limited is a creature, a creation of the British Indian Courts. It is not countenanced, not supported by the *Mitakshara* law not by the *Mayukha* nor by the *Smritis.* All that must be done away with But in order to do that, what shall we do? I suggested that some changes should be made in the Bill, that we must look at it from

3 P.M.

another angle which will give woman a higher status than we have got in the Bill; they said "No, we have got the Bill having the *imprimature* of Shri B. N. Rau and the authority of Dr. Ambedkar, and no change of a substantial nature can be made in it." That was the attitude of the supporters of the Bill. If I may be pardoned for saying that, in the Select Committee and later on also, they have not been less fanatical than the opponents of the Bill. They say, " Well there is the Bill, take it or leave it and reject it if you can. That is being repeated now after the declaration which the Prime Minister was pleased to make a few days ago, and which I know, must naturally, tie down most Members of the House in their vote."

Some Honourable Members : No, no.

Dr. Bakhshi Tek Chand : Well, it will have an unconscious effect, even if permission is given to everybody to vote as he likes. Well, I ask the friends who are supporters of the Bill, I ask my sisters ' Does this Bill do you full justice? Is this all that you want? Does it give you the rights you want?' I say, 'no'; I say most emphatically, 'no, it does not'. It is a most truncated and half-hearted measure, and if I may say so, it will do the maximum of mischief to Hindu society and the minimum of good to the members of the female sex.

An Honourable Member : Are they agreeable to your solution?

Dr. Bakhshi Tek Chand : I do not know. Now I will deal with a few of the provisions of the Bill. One of the provisions of the Bill is that the chapters relating to succession, etc. will not apply to inheritance of agricultural land. Why? Because at that time when the Bill was introduced, the position was that under Entry 7 of the Seventh Schedule of the Government of India Act of 1935, this Legislature, the Indian Legislature could not pass any law relating to agricultural land, that was a provincial subject. Well, that was the position at that time. In 1938, Dr. Deshmukh's Bill was extended to include agricultural land also. The matter went then before the Federal Court and the Federal Court agreed that this was *ultra vires* of the Indian Legislature. That was the decision of the Court and that was the provision of the Government of India Act, 1935. And therefore naturally, Sir B. N. Rau and the Committee, as well as Dr. Ambedkar and his Law department omitted it and they said this is a matter which will have to be left to each Provincial Legislature to deal with. But luckily, by that time, the Drafting Committee of the Constituent Assembly had published its Draft Constitution. In that Draft Constitution it has

been stated that Entry ? in the Seventh Schedule be amended so as to include or rather to make the subject a concurrent subject, namely, the subject of succession to immovable property or movable property, including agricultural land. That was the provision. I suggested at that time, in my minute of dissent, both in the Select Committee and in my minute of dissent, that we might wait for a few months so that whatever measure we adopt to give redress to females, giving them a share in their father's or husband's property that that might apply to all kinds of properties. What you want is unformity of law, and I venture to point out that instead of uniformity, you will have diversity, and instead of unity, you will have confusion. If this provision had been passed, the position would have been, when a man's immovable property is situated in a town, when he has urban property, to that movable property one law, namely the law of Dr. Ambedkar's court but with regard to agricultural land situated, some three miles off, the old law will continue. The sons will have all the rights from the moment of their birth and the rule of survivorship will remain, and nobody will know what is the position with regard to the property. See how many loopholes you are leaving? If you do not want to give the property to your daughter, you can sell her share in Poona and go and buy agricultural land five miles outside and then you can deprive your daughter of her share, and thus circumvent the provisions of the Bill. But now luckily, what has happened? To-day when we are at the end of this first of the second reading of this Bill, the situation is this. The suggestion of Dr. Ambedkar and the Drafting Committee has been unanimously accepted by the Constituent Assembly and it will, God willing, come into force on the 26th January which will be long before the third reading of this Bill. I asked the other day whether he is going to make a change now so that this particular clause in the Bill which excludes agricultural land be removed so that we might give one fourth or half or full share or no share, and he said, "No."

The Honourable Dr. B. R. Ambedkar : I do not think the Hon. Member is entitled to disclose a conversation. All I said was that that was my present view : later on we may reconsider the position, Now that we have power, one of the impediments in our way had been removed.

Dr. Bakhshi Tek Chand : I am very glad that my learned friend has corrected me. I am much thankful to him for the correction, that his present intention is not to repeal that clause, but to retain the distinction but later on...

The Honourable Dr. B. R. Ambedkar : I have not said anything like that at all. I do not think my friend is entitled to use a conversation.

Dr. Bakhshi Tek Chand : No conversation, but what you have said now on the floor of the House.

The Honourable Dr. B. R. Ambedkar : These are matters which I alone cannot decide. I have to take the consent of my colleagues.

Mr. Deputy speaker : The Hon. Member may go on with the Bill as it is, saying that the Bill as it is does not provide for agricultural land. He need not refer to private conversations.

Dr. Bakhshi Tek Chand : Take the Bill as it is. Whether the change will be made now or later with the consent of the Cabinet or other parties is a different matter. But what is the position now. Agricultural land is being excluded. Agricultural land forms more than 80 per cent of the property of Hindus in any part of the country. Therefore our sisters, daughters and other female relations are excluded under this Bill from succession to a very large portion of property. That is another reason for which it is necessary to reconsider the Bill and not to proceed with it in its present form. Whatever law you may have, you should apply it to all property—agricultural, urban, movable or immovable.

Pandit Balkrishna Sharma (U. P. : General): If my Hon. friend will give away for a minute I would like to know, whether, if this law is applied to agricultural property also, it will not lead to veritable fragmentation of land. *(Interruption.)*

Mr. Deputy Speaker : Let there be no interruptions. The closure may come in at any time and I am giving a warning to the House in advance. The less the interruptions the greater is the chance for a larger number of speakers to take part.

Dr. Bakhshi Tek Chand : With regard to fragmentation I am not afraid of it. It is bound to come about if you have a larger number of heirs. If a man has five sons, there is bound to be fragmentation and if he has two daughters also there will be more fragmentation. I am not afraid of fragmentation whether with regard to immovable or urban property also. If you have one or two houses, two sons and five daughters and they decide to divide the property, there is bound to be fragmentation. Therefore, with great deference to both parties this argument is wholly extraneous and should be left out of consideration.

Under this Bill more than 80 per cent of the property is being excluded. That is one serious drawback from the point of view of reform.

One of the objections raised is this. A man may have a house and a small bit of land. Some of the villagers have a *kutcha* shop also. There will be so many divisions and the son-in-law will be introduced into the family. Some supporters of the Bill say that it is a reasonable objection and therefore we must introduce a clause at the third reading by which the dwelling house of the family will be excluded from succession. That is to say, the daughter though she will be entitled to succession, will not get a share in the dwelling house. If that is so that will reduce the urban property still more. Out of the 30 crores of Hindus, except a few rich people, how many possess more than one dwelling house in which the whole family lives? Normally in the villages it is one house and a piece of land. If a trader he has a small *kutcha* shop also. If you exclude the dwelling house from the inheritance of the daughter, you take out another slice from the property.

Another objection is that the sons-in-law will be introduced, and what might happen in most cases is that they will create trouble and since they could not manage the property in another village, they will arrange to sell it to some local person. That will lead to the disruption of the family. To meet that, suggestions are being made that the daughter will no doubt get a share but only its money value. You must then give to the brothers a right of pre-emption within one or two years of the marriage; the brothers will be entitled to pay to the sister or her husband the money value of the share and keep the property. That again, I submit, will lead to great trouble. It will be difficult to ascertain the market value of the property and this will lead to endless litigation and confer little on the daughter. Agricultural land is excluded, dwelling houses are excluded and various other things will come in. It may be said that the whole share is too much, give her a half or a quarter share, I ask why not give her a full share?

If you analyse the Bill calmly and quietly and not take as smriti which has come down from the Heavens, it will be found that it does not give the minimum of benefit to the female heirs.

This Bill will destroy the Hindu joint family. Whether, it is good or bad, people still cling to it. Yesterday our revered brother Mr. Alladi Krishnaswami Ayyar pointed out that in the villages in Madras it is

still in force. My friend Mr. Santhanam may take another view. But it is there. Yet it is there and has a hold on some people, whatever might their proportion. All other principles of Hindu law such as survivorship, succession, the son having a share you are abolishing. What is the necessity? The necessity is to enable the daughter to get a share. I therefore submit that parts 5, 6 and 7 of the Bill introduce drastic changes in the Hindu family system and give the minimum benefit in its present from to the females.

I would therefore ask the supporters of the Bill whether it is necessary to push the Bill to a final vote at this stage either tomorrow or in the next session. Is it not desirable to give the matter more consideration and to see whether there is any other way of securing full benefit to the female members of a joint Hindu family, whether they are governed by *Mitakshara* or *Dayabhaga* and at the same time causing the least disturbance to the systems that prevail in various parts of the country.

I have made my submissions both to the orthodox and reformer friends. I have to make only one suggestion. I have not worked out the scheme in my mind, it will take a lot of time. But I shall place before the House the broad outlines of it. And I will ask Dr. Ambedkar, I will ask the other legal Members, I will ask the reforming Members, I will ask the orthodox Members to see whether that is not an alternative worth considering. In fact, up to this morning I was hesitating to speak on the subject and my view was to place it before the Committee which, it has been promised, will be meeting shortly and I had intended if I am a member of that Committee to place it there. But when I was called upon to speak to day I thought the best course was to place it before the House. My suggestion is this.

What is our objective? Our objective is to give to the female members of our family full right in the property. What we should do therefore is this. Do not disturb the joint family. Do not overrule the law of survivorship. Let them continue as they are as long as they can. But a woman, as soon as she is married, should in the Mitakshara family become a full co-parcener in that property. At present she is a member of a joint family but not a member of the co-parcenary. I will ask hon. Members to permit me for three minutes just to place my proposal before them and then to consider it. Any interruption on that point will not help. It is only a proposal for your consideration, for the consideration of the Committee and for the

consideration of the Law Minister and the Prime Minister and others who may be interested in this matter. At present every woman after her marriage passes into the *gotra* of the husband, and she becomes a member of the joint family but with very limited rights. Up till 1937, her rights as given by the British Indian courts were those of maintenance only. She had no legal right in the property, she could only stay and enjoy it.

That was the position. In 1937 came the Deshmukh Act that on the husband's death she will be entitled to a share of the property—the same share as the husband—and also entitled to have her share separated if she could not pull on with the brothers-in-law or other members of the family. What I am suggesting is this. Add to that, only one thing namely that she will become a full co-parcener. Just as in the *Mitakshara* family, the moment a son is born he acquires the right in the father's ancestral property and from the moment of this birth becomes a co-sharer or co-parcener, similarly let a woman from the moment of her marriage become a co-parcener, with full rights. There may be her own sons and others. They will all continue to live together without any necessity to separate, But if she thinks that it is not possible to live together with them she can separate her share and take it way—separate it in the same manner as she can do under the 1937 Act after the death of her husband. That is one change. If you do that you will not disturb the father's property and you will not disturb the joint family. Let the joint family continue as long as it can. Somebody said it was crumbling. Somebody said it was Cruimbling only for the purpose of Income-tax. Others asked as to how many people pay Income-tax and said that 99.5 per cent. of the Hindu population does not pay Income-tax still they have the joint family system. These arguments mean nothing. If these are the circumstances under which the joint family is crumbling, let it crumble. But let it continue for as long as it can.

What I am suggesting is not something new or something which is against the spirit of Hindu Law. If I may say so, it is in accordance with the spirit of the original law—the law of the Veda, the law as given in the early *Shastra* by Jaimini and others. I do not want to prolong my speech. But I would like to state what the position was in Vedic times and in times which shortly followed. You please read certain portions in Dwarkanath Mitter's book published in 1913 on "the position of women in Hindu Law". You also please read

in Volume XI of the Allahabad Law Journal a very learned article by the late Dr. Satish Chandra Banerjee of Allahabad, one of the most promising and most eminent lawyers that this country had produced but whose career was unfortunately cut short by his death at a very early age. It is a very elaborate article. Also the book of Dr. K. Biswas of Patna. All these contain quotations from the Vedas and other persons who came in before Manu as to what the position of women at that time was. The position of the women at that time was that, she was a full owner of the property of the husband. Maharishi Jaimni says, commenting on the Vedic texts, that "the wife is entitled to the wealth from the moment of her marriage and whatever is acquired by the husband also belongs to her." That is to say she becomes a full co-parcener. Then, dealing with another text, he says "Not only is the woman possessed of the same religious and civil rights as man but all wealth which he (that is the husband) acquires is at her disposal. She is entitled to control even the disposition of acquired property by the husband"—his own acquired property. That is the conception of a co-parcener which we had. Just as a son from the moment of his birth gets a share and can control the father's alienations, unless they are for family necessities or for just purposes, similarly should the woman have the right from the time of her marriage. My submission is, let us go back to these old Vedic texts and all our Hindu law and its glory before the period of degradation began and the rights of women came to be curtailed, and let us make her a co-parcener. That is one branch of my suggestion.

The other branch of my suggestion is the one which Sir Alladi Krishnaswami Ayyar made yesterday that a woman should have full right to alienate her property and this fiction of a Hindu widow's status must be done away with. With regard to that I would ask the indulgence of the House for two minutes. All my friends who are opposing the Bill say "we want to go to the *Shastra*". We don't want to go beyond the *Shastras*, particularly the *Mitakshara* which was followed by the country. With the exception of Bengal the whole country has followed it. What was the law of *Mitakshara* on this point ? I would ask you to look to Vijnaneshwar, Chapter II, Section 11 verses 2 and 4 of his commentary on Yagnavalkya as to what is a woman's *stridhan*. After quoting certain things, that is whatever is given by way of presents to the woman at the time of marriage—which is not important—he says: "And in addition to that, the *stridhan* consists

of all property obtained by inheritance by partition, by seizure (that is by adverse possession)" and so on. That is to say, the property inherited by the woman from her husband or from her father or anybody else ought to be her full absolute property and nobody can control it. This was the law laid down by Vijnaneshwar in the 11th Century. That had continued to be law until the British came. Another commentator of the Banaras school N. S. Viramatadhira repeats it. Nilakantha, the author of Mayukha which is the leading authority in the Bombay Province, particularly in Gujarat and the Island of Bombay again repeats it. Except in Bengal in every other Province, that was the law until the British came. When the British came they said. "Well, let us examine the original texts of *Mitakshara*". They said it was a commentary upon Yajnavalkya. Yajnavalkya used certain specific notes and used the word *adi* and *adi* is interpreted by Vijnaneshwar in this manner. That was the position. A great deal of struggle went on. Of course some Courts struggled, particularly Madras, for a number of years. But ultimately the Privy Council said, "Well we must do it", though it was quite contrary to the rule which the Privy Council itself had laid down that if there was a difference between the *Smritikar* and the commentary we must follow the commentator. That was the rule they laid down, but somehow or other they departed from it here.

So, I say, go back to the Vedic position with regard to the position of a daughter's and a husband's family, and go back to the position of *Mitakshara.* Tear off all this mass of judicial literature which has arisen in this country during all this period and go back to what was the law up to the eighteenth century. If you do these two things, I tell my friends, the supporters of the Bill and those who want to reform, that you will be getting much more. If the woman becomes a co-parcener in a husband's family. You don't disturb the joint family; the sons may continue. There may be good things in it, there may be bad things, but let it crumble away and die its natural death later on. But give the woman a right in her husband's property, the same right as the son or the husband has. There may be some further points to be considered as to how this property is to go after her death and so on, but these are details into which I won't enter. I will ask Hon. Members to give this matter the most serious consideration and then to see whether this is not a scheme which is not much better.

With regard to the unmarried daughter, I see no reason whatsoever why she should not get a full share along with the brothers in the father's property, because no dowry has been given to her and she

should not be made dependent. Some of my friends have been painting glowing pictures of the love which the brother has for the sister and how they take great efforts for the marriage of the sister. Quite true some people do it, many do it, but we know of cases also to the contrary where the brothers, particularly the brother's wife corners the whole thing and very little is left by way of dowry to the sister particularly if she is going into a family which is not very strong and has not got much influence in the village. So, we must make provision for that also. May I say that there is considerable authority in the *Shastras* also for that. Some say her share should be one -fourth, some say equal, some say it should be one-half. I am not for half. Following the Mohammedan law : she must be given full.

Shri B. L. Sondhi (East Punjab : General): For how long will the unmarried girl continue to enjoy the property?

Dr. Bakhshi Tek Chand : Once property is vested, it vests and there is no question of divesting it. After all it won't create much disturbance in the family. We must make some provision; we can see that adjustments are made later on.

A word regarding the Chapter relating to marriage and the Chapter on divorce. My objection to this portion of the Bill is a very simple one. The first part of the Chapter deals with monogamy and I am a whole-hearted supporter of the provision that every Hindu should marry once only and not more than that. The majority of our people do that.

Shri H. V. Kamath : Once or not at all.

Dr. Bakhshi Tek Chand : All the arguments that there is no son etc., are of no use. Where is the guarantee that if you marry three wives one after another, one of them will produce a son? It is all a matter of chance. Therefore that is an argument which does not appeal to me in the least. As a matter of fact and as a matter of practice the large majority of Hindus have only one wife and I see no reason why that provision should not be put in here.

Shri Lakshminaran Sahu : In Utkal there is an excess of three lakhs of women. If you start talking of one for one, I should like to know where would you provide for the three lakh extras ?

Dr. Bakhshi Tek Chand : Here again religion has been brought in. In Baroda, in 1931 the Monogamy and Divorce Bill was passed by a legislature 95 per cent of the members of which were Hindus, under the aegis of a Maharaja who was an orthodox Hindu. For nineteen

years that Bill has been in force. Can we say that Hinduism in Baroda has come to an end because of that Bill? In Bombay Mrs. Munshi's Bill was passed in 1946 and became a part of the law of the land. In Madras, last year, the Madras Legislature passed a similar Bill. Thus, we have got practically the whole of South India where monogamy is a law of the land. Hinduism there has not been destroyed. All our Madras friends are as strong and as kicking as they ever were. Therefore, I consider this provision is a very salutary one and must be maintained.

Shri Gokulbhai Daulatram Bhatt : If you, Sir, permit I should like to ask one or two questions for information sake.

Mr. Deputy Speaker : He does not give in.

Shri Gokulbhai Daulatram Bhatt : Whatever you have said about monogamy is quite true but what I want to ask is whether a man is permitted to remarry in the life time of his first wife if she consents to such marriage?

Dr. Bakhshi Tek Chand : I am very glad, our respectable brother Gokulbhaiji has put that question. I say that you can *get* a woman's consent in any way you like. I have seen notorious cases of that. In one case there was an old man and an old woman. A very learned pandit, an astrologer was brought in and after performing all the *pujahs* he said to the woman. "Your husband is going to die during the course of the next three months; the only remedy against that is that he should remarry and if he marries again he will have a son" and all that. And that old lady, thinking that this great calamity was coming upon her, gave her consent, Now of course, there is not only one woman but five women in that house. *(Interruption.)*

Mr. Deputy Speaker : Order, order. The Hon. Member has been anxious to sit down for the past half an hour but on account of the frequent questions he has to go on.

Dr. Bakhshi Tek Chand : I come to the last point, the question of divorce. One of the great mistakes which have been made in this Bill is to make the provisions for the dissolution of civil marriages similar to the provisions for the dissolution of sacramental marriages. In this respect, the Bill as now reported by the Select Committee differs from the Bill which was orginally framed by Sir B. N. Rau's Committee in 1944 and then revised by him in 1945. What I say is so far as civil marriage is concerned you maintain the present law which gives the same rights as the Bill gives. But do not try to introduce

provision for conversion of sacramental marriage into civil marriage. Sacrament is a sacrament. As has been originally suggested and as has been permitted by some of our old *Smritikars,* the rule of divorce should be limited within the narrowest possible bounds. With regard to this B. N. Rau's position was this.

Impotency at the time of the marriage which has continued up to the date of divorce. This is a condition to which no reasonable person can object.

Then the person may have been an idiot and the fact may have been concealed. This is a second physical thing, which cannot be quarrelled with.

In addition to these two conditions, you can allow divorce when a person changes religion. A Hindu may become a Muslim and marry. Under the fiction in the Hindu law, law that the marriage is indissoluble and the sacrament still continues, the wife is helpless. On what principle can you do that when the husband has changed his religion and gone to another and married wives according to his new religion?

Shri Mahavir Tyagi : Would it not result in this that whenever a divorce is needed instead of undergoing the routine legal proceedings, people will change their religion?

Dr. Bakhshi Tek Chand : No, they won't change their religion. In addition to the above conditions, you can add desertion of the woman for a certain period; call it five years, six years or seven years. These conditions are, I submit, nothing new. They were known to our ancient *Smritikars.* I feel that divorce should be limited to these three or four cases. Have we not seen cases in which the husband after marrying has abandoned his wife? Have these unfortunate women no remedy? They should have a remedy. But I would limit it to these three or four conditions. But do not introduce litigation. If it is a case of providing adultery, evidence can be faked. Some sort of collusive evidence can be produced and the charge proved. But I do want to introduce that in a sacramental marriage. My submission as in my minute of dissent is that the chapter relating to marriage and divorce should be recast. We have two kinds of Hindu marriages: the civil and the sacramental. In the one, you know the conditions under which it can be dissolved. In the other, you can have all your new modern ideas. I would ask the supporters of this Bill to give their serious consideration to it and see whether it improves the position of women. If my suggestions are accepted, it will make the present Bill much

better and women will rise to the full stature of their womanhood. They will have full right to property. It will give them emancipation on the economic side. Under the new Constitution there is adult franchise. We have women Ministers in charge of different branches of Administration. We cannot limit the right of woman, the mistress of the house and say that she would be entitled only to maintenance but not other rights. That would be a gross injustice. It would be contrary to our ancient Laws. What was introduced in between might have suited the particular circumstances and conditions of those days, but they are all outworm. They are not part of the Hindu religion and should be done away with. We should get rid of this jungle growth and go back to Vedic conceptions. These are briefly my submissions and I would ask everybody to give them their serious consideration.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways) : May I ask one question in clarification? Supposing a woman becomes a co-parcener in her husband's family ... will her share be part of the husband's share or will it be separate?

Dr. Bakhshi Tek Chand : So long as they are joint, it will be joint ownership of the whole family just as you and your sons are co-parceners in the property; but if there is a division, then she will become independent. It is a new addition just as a son. It is very simple.

An Honourable Member : Sir, the question may now be put.

Some Honourable Members : No. no.

Maulana Hasrat Mohani (U. P. : Muslim): I will take only five minutes.

Some Honourable Members : *rose*—

Mr. Deputy Speaker : Order, order. Will all Members kindly take their seats? I find a large number of Members interested in speaking, but as I said yesterday, if we go on at this rate, we may have no time even if we sit for a month or two months. There is no tendency on the part of Members to limit their speeches. This Hindu Code covers not only Hindus, Hindu law of marriage and customs but it applies to Jains and Sikhs also. It does not apply to Muslims, Christians and Parsis. *(interruption).*

An Honourable Member : There are clauses which affect other people also.

Mr. Deputy Speaker : Hon. Members know fully well that when the Speaker is on his legs, no Member should get up. I need not remind

hon. Members about that. I, therefore, propose to call a Member of Jain community and a member of Sikh community and then others. Prof. K. T. Shah.

Shri H. J. Khandekar : (C. P. and Berar : General) : Why not the Harijans?

Maulana Hasrat Mohani : *rose.*

Mr. Deputy Speaker : I am not going to allow this Hon. Member to come in now I will first start with the others.

The Honourable Shri Satyanarayan Sinha (Minister of State for Parliamentary Affairs) : I want to make one suggestion. If the House agrees, we can sit till 7 o' clock today and even after that, if members are not satisfied and there are still others who want to speak we can sit on Saturday also. Government is prepared to allot half of Saturday for this business. There will be no Question Hour on Saturday and before Lunch we will have more than 2½ hours. If that suits your purpose and if the House agrees, the House agrees, then that will obviate all the difficulties.

Mr. Deputy Speaker : I think it is a very reasonable proposal. I have already said the House will sit on Saturday. There is no going back upon that. If owing to exigencies of public business, it is necessary that we should sit on Saturday, heavens will not fall. We are sitting on Saturdays for committee meetings. I have requested the Government to cancel Select Committee meetings on that day. I shall also see that no Select Committee meetings are fixed for Saturday. Hon. Members will be relieved of all other parliamentary work so that they can take part in the discussion on the Hindu Code.

The Hon. Minister for Parliamentary Affairs has just suggested, on behalf of Government, that they are willing to allot Saturday, which they had orginally intended for other Government business, for the discussion on Hindu Code. Finding that more Hon. Members are anxious to speak, they are prepared to allot Saturday, the forenoon of which will be earmarked for non-official Member and the afternoon, allotted to the Hon. Minister of Law for his reply. In addition, he makes another suggestion for the acceptance of the House. It is open to them to accept it or to reject it. In view of that there are many Hon. Members who are anxious to speak. We may sit till seven o'clock today. I leave it at 5 o'clock today, when I shall find out whether the House is tired or is still active to continue the discussion. Personally

I and my friends of the panel of chairmen are prepared to sit till seven o'clock. I am entirely in the hands of the House in regard to this matter.

The Honourable Shri Satyanarayan Sinha : Sir, I said on behalf of Government, that they are prepared to allot half of Saturday for the discussion on the Hindu Code Bill. But as you have already said that the whole of the day would be allotted for this purpose, Government will agree to that.

Mr. Deputy Speaker : I hope Government will accept the suggestion which I have made.

Pandit Govind Malaviya (U. P. : General): Sir, I wish to submit to you in connection with your ruling, that on the assumption that Saturday will be a free day, some of us have made important and unavoidable engagements elsewhere. Speaking about myself, I have got some unavoidable and important engagement on that day. I hope, Sir, you will keep that fact also in mind. If we had known that Saturday would be a working day we would not have done that. Now this will be upsetting all our engagements, and I, therefore, request that instead of Saturday some other day might be fixed for the discussion of this important measure. It is open to the Government to do so easily. They can take up Government work on Saturday and allot some other day for the discussion of this measure. We will have no objection to that But I hope that the House will appreciate that if others who wish to take part in this debate, are not able to come on that day, they should be given some consideration.

The Honourable Shri Satyanarayan Sinha : I think, Government will have no objection if Hon. Members wish to sit on Monday. On Saturday we shall take up other Government business.

Shri Ajit Prasad Jain (U. P. : General): Why not continue tomorrow and finish the discussion on this Bill?

The Honourable Shri Satyanarayan Sinha : On Saturday we are meeting for Transacting Government business. Government is prepared to have the discussion of this Bill put for Monday, but all the same Saturday will be an Official day.

The Honourable Shri K. Santhanam : Members will have less time on Monday than on Saturday, But if the members are willing to conclude the debate on Monday we won't have any objection. But if the postponement is due to dilatory tactics. . . .

Mr. Deputy Speaker : I am really sorry, our friends are not cooperating. A suggestion came from Pandit Govind Malaviya and some

other Hon. Members—he is an important member and is taking keen interest in this Bill on one side or the other—that they would prefer this measure being taken up on any day other than Saturday and Government in consideration of their wishes was prepared to take it up on Monday. The Government spokesman has said so. Hon. Members are aware that on Monday there will be the question hour. Knowing this full well they have accepted that day.

Sjt. Rohini Kumar Chaudhari : Most respectfully I would like to point out to you, Sir, that Saturday is a holiday given to us for certain purposes. I am willing to forego that holiday if there is an important reason for it. Now I want to ask this House, is it convinced, is it willing to finish this Bill as early as possible? What is the urgency for this Bill? We have more important Bills. We have the Insurance Bill which, according to you, must be passed into law this session. If this Bill .....

Mr. Deputy Speaker : The hon. Member will resume his seat. We have been hearing this objection from some Hon. Members that there is no hurry to get on with this Bill. I am afraid there is no unanimity of opinion in this House so far as that matter is concerned. If there was that unanimity we would not be thirsting for time like this. It is a well known fact that opinion on that point is divided. On the mere suggestion of one Hon. Member I do not want to take the opinion of this House.

Now it is clear that Saturday will be an official day when official business other than the Hindu Code Bill will be transacted. On Monday I propose to allow the non-official members to speak till mid-day. In the afternoon I propose to call upon the Hon. Dr. Ambedkar.

Shri Mahavir Tyagi : Several of us have been waiting long to catch your eye. Shall I take it as your ruling that, on the Hindu Code Bill no more Hindus shall be allowed to speak?

Mr. Deputy Speaker : I did not say so; nor would I say so. The Hon. Member has, unfortunately, though he is very alert, misunderstood me. All that, I said was that, not one single Jain or Sikh member, to whom also this Bill equally applies, has spoken.

Shri H. J. Khandekar : What about Harijans?

Mr. Deputy Speaker : The sponsor of this Bill is the Leader of the Harijans. It is no good saying that the Harijans do not belong to the Hindu community. I think Harijans are as much Hindus as any others. This caste consciousness need not be pursued any further.

All that I said was that Jain and Sikh members will be given preference to other members. I have no intention of shutting out any others.

As it stands at present, I find that the suggestion of the Government is very reasonable. They have spent so many days on the discussion of this Bill and have given one more day. If still on Monday, it is the general wish of the House that they should go on, I am absolutely in the hands of the House. So far as the Chair is concerned, it is satisfied that there has been sufficient discussion.

4 P.M.

Shri Mahavir Tyagi : I protest against this. I feel that the Chair's benign eye should not make a distinction between any class, caste or creed. Your eye should go round the House without distinction of majority or minority.

Mr. Deputy Speaker : The Hon. Member has thoroughly misunderstood me. Whenever a Bill comes up for discussion which affects certain communities—unfortunately there are different communities in this country—a chance should be given to the representatives of all communities to express their views. If the Hon. Member reads this Bill, he will find that the scope of the Bill includes Jains and Sikhs also. A number of Hindus have already spoken and so I must allow some Jains and Sikhs to speak now. We must know their viewpoints before we go through the Bill clause by clause.

Shri Mahavir Tyagi : I protest .....

Mr. Deputy Speaker : I cannot tolerate this. The Hon. Member will kindly note that it is improper to use this language.

* **Prof. K. T. Shah** (Bihar : General): Sir, originally when the Bill was first introduced and this motion came before the House, I had no great intention to intervenue in the debate. But now that the debate has proceeded so far and a variety of view have been placed before this House, now that there is freedom of voting from Party mandate, I feel it necessary to make some observations arising out of the motion, and of the Bill, which I trust, will receive the consideration of the Hon. the Law Minister and his colleagues.

You Sir, have been pleased to say that I have been called upon as a Jain to speak on the matter. I stand here only as a member of the House, and can claim no special right or privilege to speak as a member of any community. I call myself only as Indian citizen and

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 602-607.

do not regard a belief in any particular faith a qualification or a disqualification for participating in discussions like this. I speak only as a member of this House.

Sjt. Rohini Kumar Chaudhari : On a point of order, Sir, you called upon Prof. Shah to speak on behalf of the Jains but he says that he does not claim to represent the Jains.

Mr. Deputy Speaker : It is no point of order. ‘

Prof. K. T. Shah : I may also add at the same time that I am going to support in general the provisions underlying this Bill even though I happen to have tried to form an opposition which is not yet recognized. Coming though, as it does, from a member professing to be in the opposition, and coming also from one who has consistently opposed almost every provision of the Constitution, every attempt at legislation of a structural or reforming kind that this Government has made. I hope and trust that the support that I am now extending, unconditionally and unreservedly to Bill will meet with the appreciation that it deserves. Unless Government feel the wisdom of the old saving that the Devil may also quote the Scripture and that, therefore any support coming from me should be looked at askance, it should be welcome. If that is their view, the opposition to this Bill would be served much more effectively by me than I at least would like to wish.

Holding this view, Sir, and offering my co-operation in this manner, I would like to say in all humility, with the utmost deference to this House, and even at the risk of incurring the charge that we as a people lack a sense of humor, I would not like to use any expression or illustrating which might in any way introduce a tone of levity or lightness in this discussion. I regard this matter, this subject, as so vital to the very existence of our country, I regard this Bill as of such far-reaching consequence that I will not allow any expression or illustration to creep into my remarks which might in any way give any observer, any outsider, any student of our affairs, an appearance as though we are not sufficiently serious in this matter.

Having made these observations, I would proceed to examine some of the objections that have been raised some of the pleas that have been urged in regard to the subject matter or even the basic principle of the Bill. The challenge has been made, Sir, whether this body is

competent to deal with a subject of this character, whether the House has been elected on a clear issue to determine the contents of this Bill, or whether there is sufficient urgency in this matter to allow this House to deal with this proposition. I for one do not think that there can or should be a question about the competence of this body to deal with subjects of this character. The Hon. Member, who spoke just before me, has given a number of illustrations in which structural changes including the Constitution had been proposed by legislative measures in this House and carried. Even more important reforms had been made by the legislature preceding this which was not of the same sovereign character that this Legislature is, and therefore the question as to the competence of this House to deal with matters of this character seems to me to be irrelevant, unbecoming and if I may say so, not quite respectful towards this Assembly, for while it is quite true that this single issue was not placed before the electors, those of us who recollect the manner and method by which we have been elected to this House will realize that not on any issue was this House elected except that of acquiring independence and shaping a constitution for the country. If you press that argument too far, I am afraid you will render many matters with which this House has dealt with as either illegal or *ultra vires*. I would not like therefore that any suggestion of this character can be or should be advanced so as to throw any doubt whatsoever, on the competence, the authority and correctness of this House in dealing with and disposing of such matters.

4 P.M.

Sir, in general elections also, it is not possible to have each issue separately examined. As all those, who have an experience of popular general elections, will realize general elections are always fought on a multiplicity of issues. There is therefore not any clear indication of a majority on any individual issue of such complexity as we are dealing with now. Unless the Constitution provides a method like referendum, unless we had a constitutional device like that suggested by Mr. Gokulbhai Bhatt, we would find it extremely difficult if not impossible, to get a clear verdict of the people on issues of this character. There would really be no means of ascertaining popular opinion. Even then there may be those who would say, given the state of public education in this country, given the state or the condition in which the press in the country is monopolized by a few individuals, given also the lack of experience of the voter in matters of this character,

the decision of the people, even if competent, may be open to question. I would therefore suggest that an argument of this character ought not to influence the judgment of this House and we should confine ourselves to the discussion of the proposition, as I am happy to see in many quarters it has been.

The opposition to the Bill is led and is made up of people for whose opinions, I have personally very warm regard. I am not, therefore, prepared to say that this is an opposition of vested interests, that this is an opposition inspired by ulterior motives or dictated by other considerations. I fully realize, Sir, that the opposition has in many cases very serious grounds for holding the views that they do, and though, I have the misfortune of differing from them, I cannot for that reason say that their views are not entitled to the widest consideration we can give them. On that standpoint, I feel that there is a great deal of force in the arguments of those who question the urgency of the matter and are prepared—if not differ discussion— at least take much more time on the discussion than seems likely to give to this matter, but by saying this, I should not be misunderstood I should not be understood to say, that I would like the matter to be indefinitely postponed. I should like this body whose sovereignty, I would not question, to give a decision on this matter once and for all, and though I am fully alive to the consideration advanced by one of the hon. speakers that there is no guarantee that the next House will accept the decision, even if we give it, I feel that once an indication is given, once a sign-post is erected, once a road is built, it would be difficult to reverse the engine and go back. However, that is a matter of faith rather than of reason, of general belief rather than of intellectual conviction, and I am therefore, open on this matter, altogether, but taking however into consideration the main points that have been urged against the merits of the provisions contained in the Bill, I feel it impossible to accord my support to the opponents of the several sections of the Bill, several chapters in the Bill, or the provisions in the Bill. The main difficulty centres round, so far as I can see on the position of women. I have already said Sir, that I have not the slightest desire to bring in the least bit of levity in this discussion, and therefore, some of the arguments, some of the points made earlier in this debate on this matter leave me somewhat cold. We are building up a country of equal citizens irrespective of religion, sex, class or creed. If that is the principle upon which we take our stand, if that is the preamble of our Constitution and the guiding

principle of the life that we are to build up for this country hereafter then I think that the provisions of this Bill are in full conformity with the ideals enunciated in the preamble to the Constitution and as such, anything which we now propose, that would be in any way different from or derogatory of this provision, ought not to be accepted by us. The attempt made in this bill to place women on a position of equality in regard to family relationships, in regard to inheritance, in regard to property, in regard to marriage or divorce, is an attempt not only in consonance with conditions now prevailing all over the world and coming into vogue in our society as well, but are conditions, which in my opinion are dictated by a full realization of the actual conditions and observed trend of events everywhere. It is true that for ages past, marriage has been regarded as a sacrament, but there is nothing, so for as I can see in this Bill, to prevent anybody from realizing and treating it even today as a sacrament. After all, I venture to submit, sacrament is a mere matter of your own heart and creation than an imposition from outside. How many sacraments are there, which though continuing to be sacraments are daily broken, broken in the worst possible manner and disgrace, both the breakers and those who are parties to that? Sacraments cannot change merely because the law gives a particular character to the relationship of man and wife as is attempted to be in this Bill. Whether or not, the law declares and recognizes a union to be a civil marriage or a civil contract, those who are parties to such a union, who have a very highly idealized opinion of the nature and function and objects of such a union will not cease to continue to do so. If however, circumstances develop which make it impossible for them any longer to continue in that position, if conditions develop which make it impossible to maintain that high ideal. I for one think that it would be much better to discontinue the relationship by any legal and reasonable manner that can be found than to continue it to the mutual prejudice, to the continued misery of the parties concerned or the offspring. It is not a very pleasant matter, Sir, to suggest that there should be freedom for divorce if unions could be all made in the form in the ideal, in the spirit in which they were supposed to have been made, but we live in a mundane world, with material considerations, with human weaknesses and therefore, it is too much to expect that merely by an ordinance, merely by a fireman, we would continue to keep and maintain unions in the idealist sense in which they have been believed conceived and maintained.

Permission, therefore to dissolve in a legal, reasonable public manner unions which have become oppressive, which have become a source of misery to the parties and their off-springs, is nothing more in my opinion that a recognition of the actual prevailing circumstances and the developments that may have in any given case taken place, and therefore, it is that even though one may not like the idea, one must recognize realities, one must face the actual position and admit that it is much better that we should discontinue or dissolve such unions than that we should continue a misery for such parties.

The idea that these unions should be monogamous in character while they last is also one which in my opinion is the basis, is the foundational condition of a continued happiness, continued success of such unions. There may be occasions, however, when such unions as I have just said prove unbearable or intolerable by circumstances that neither party could foresee, but in that case, without too much fuss, without going into an operation that might involve washing of the dirty linen and mere playing to the gallery, so to say, by sensationalism, we might in our law devise machinery by which this union could be easily dissolved without unnecessary prejudice to any party. I do not see therefore that we need insist upon reasons or conditions or excuses that any other legal systems have been made necessary for granting divorce and I think it would be much better if divorce is made easy, simple and unexpensive, more than is at any rate, the case in some of the western countries whose model we have been following. The question of inheritance, the question of enjoying a share of the patrimony is again one which does not seem to me to be a just cause for the degree of heat that it seems to have evoked in this House. After all, in this country how many people are in a position to have property and leave such property outside beyond their life? If you go by standards, if you go by measurements such as that of the income-tax statistics, you will find that perhaps less than a million people are in a position to have an income of about Rs. 250 a month and that would include all people, not only those who are regarded as income-tax payers, but those who try or manage to escape that.

In a population of over 300 millions, the income tax paying class number about one million, or with their dependent about three to four millions and that is less than one per cent of the total population who can possibly afford to have some property that can be divided or that can be the cause of disaffection or of inequality of rights as

between the descendants of common parents. I see really no reason why on this subject any heat should be generated, as regards the recognition of equal rights of daughters and sons in the matter of division of patrimony. Speaking for myself, I may say, I do not believe in any property at all, and the sooner the day comes when property as a whole is abolished, when provision is made for everybody by the community, provision to see that everybody gets work and gets his or her wants or requirements met, the sooner that day comes the better for the community. And this source of evil, a learned lawyer called it the source of strife, I call it this property which is the source of evil, I say that property should be abolished, and the sooner it is done the better it would be for the community and for legislations of this kind. If it were possible at this stage to suggest an amendment of the kind I like, I would even suggest that all clauses relating to property be abolished or deleted and a simple proposition be inserted, that while property continues, property of any kind, both land or personal, it shall be equally divided. That would be sufficient for the time being and we ought to endeavour that the day draws nigher and nigher when property as a whole will be abolished and everbody would have the same right to work, the same right to enjoy a given standard of life as those who are advantageously situated with patrimonies in their hands.

On these two crucial issues therefore, one of marriage and the other of inheritance, I say that the Bill goes no further than what conditions around us necessitate. If and while you maintain an individualistic society, if and while property remains to be the corner-stone of or the foundation of your social system, and the profit motive remains the governing impulse of the social machine, so long I see no reason why there should be inequality. The equality should not be merely nominal. Political equality, the right to vote would mean nothing so long as economic equality also is not assured to every human being, to every citizen of this country. One has heard a great deal and I was very glad to hear it all that in the essence of Indian civilisation, in the essence of our social system, the highest honour is paid to womanhood. If that is true—and I do not doubt it—then I do not see why mere sanction of equality in property should be excluded, if you are really so worshipful of womanhood, if you are so respectful and reverential to womanhood, why do you hesitate at all to give her equal right to what after all, is mundane property, that which must

be left behind by every one of us. However much we may be attached to it, however much one may hold and accumulate property, I do hold and I say it with the utmost reverence and the utmost humility, that I consider that in the process of evolution, woman seems to be more highly evolved, a finer organism than man, it is not, however, any disparagement of either sex. All I say is that, given the function that nature seems to have entrusted to women, given also the function and the objects with which womanhood has to deal in this social system, we cannot rever, we cannot regard or respect womanhood too much, and as such I would not like the least sign of inequality, the least semblance of differentiation or invidious distinction between man and woman, as between son and daughter of the same parents.

The question, however, of adoption or of guardianship and so on, does not interest me to the extent that some Hon. Members of this House seem to be interested in it. Adoption or for the matter of that, testamentary powers appear to be artificial extension of the human personality beyond death which is utterly unnatural, in my point of view. It is bad enough to have and hold and control property, it is bad enough to have and hold the property and the profit motive in our minds while we are alive. Why should we continue to prolong our personality? Why should we desire to insist upon our orders being obeyed even after death? Why should there be this artificial extension of personality by such an instrument as adoption? Knowing, however, that it is an ancient institution, knowing however, that it is an institution which many regard as a point or as a factor in their salvation, I am not prepared to suggest that here and now we should abolish it. I am prepared to say, if you regard it as a source of your salvation, if you regard it as something by which your personality is perpetuated, your civilisation or culture or work in life is continued, then it is necessary. But, in that case, you need hot have inequality between man and woman. No discrimination or legal restriction between man and woman. The same right should be extended to every one in the community. I base my support of this Bill on grounds of social justice, economic equality and of political propriety. I should think that the Constitution that we have adopted, that the ideals that we have held before us, that the hopes that we have entertained of a planned and

progressive society here after, in view of all that, I think we cannot do better than take this Bill as the beginning in the right direction.We cannot do better than recognise the provisions it has incorporated, regarding removing all inequalities as between man and woman. It is not merely a matter of recording every five years or every three years one's vote at the general election. It is also a matter relating to life and work, of equal opportunities to health and education of standard of life and the same fulfilment of the elementary wants of human beings, in the matter of food, shelter and clothing. These should be available, and should be made available if they are not available by the concerted and common action of our society as a whole. Society should realise this obligation that it is not merely a paper proposition that we have enunciated in our Constitution, but it is a sacred duty and obligation that ought to be discharged at the shortest measure of time that we can manage it, that all these things should be made available to every citizen of the country so that the hopes and aspirations that we have formed, so that the hopes that we have entertained ever since the freedom of this country was achieved, could be realised. It has been said by a very great American—President Lincoln, that a nation cannot be half slave and half free. While not exactly Slaves one half of this country, of our community still feel disabilities and weaknesses or invidious discrimination against them, which it does not wish, should be allowed to continue any longer. In this connection may I mention a statistical fact which perhaps is not realised by every person in this House. It is this. While woman is in a majority at birth, on the overall population she is in a very striking minority. Whatever may be the conditions in a province like Utkal, on the whole, in India woman has always been in a minority almost beginning from the age when marriage begins, from about fifteen onwards, their numbers go on thinning so that in the over all population woman was and is still in a minority. What is the significance of that?

[*At this stage Mr. Deputy-Speaker vacated the Chair which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen).*]

I for one think, that is because of the unequal treatment given to women as between boy and girl, as between son and daughter that

it has resulted in a majority at birth being reduced to a minority on the whole, so that that charges of unequal treatment must be faced. Here is a Bill which tries to remove that. There are many provisions in the Bill which may not satisfy everybody, even those who on principle accept the Bill, even those who realise that it goes a great way forward in rationalising our society, simplifying our legislation and organising our social system to a given end. But we are not discussing details just now. Specific provisions apart, the principle underlying the Bill, the motive spring of the entire structure should commend itself to the House and I trust the House will accept it.

Shri Lakshminarayan Sahu (Orissa : General): *(English translation of the above speech)* I would like to say, Sir, that I did not mention this thing as a joke that there are more women in Utkal. The number of women in Utkal exceeds by three to four lakhs and when it is not possible to find out a match for their marriage, then they are married to a *Sahada* tree.

Prof. K. T. Shah : I am speaking of the whole country and not of any particular province. Therefore it is not necessary for me to answer this particular question. Let it be left there.

***Sardar Hukam Singh** (East Punjab : Sikh): Sir, at this late stage of the debate, I feel it is not very easy to advance fresh arguments or make new points on the subject on which so many distinguished lawyers and eminent scholars have taken part for so many days. But as I have been called as a representative of a particular community to which this Bill applies, I must say something which should represent the feelings of my community so far as this particular code is concerned.

I do not agree with my learned friend Prof. Shah when he said that he wants to speak only as an Indian. I would have gladly repeated the same phrase, had this code applied to every citizen of India but as it stands it applies to certain communities only. Therefore I feel and believe that I have a right and a duty to speak on behalf of my community.

*C.A. (leg.) D., Vol. VI, Part II, 14th December 1949, pp. 607-10.

Though I have the advantage of having heard so man scholars at the same time I feel I have certain disadvantages as well because most of the things have been said and if I repeat them they would look stale. I have, therefore, decided to confine myself to certain points only which particularly concern my community and on which I feel that I have to express my views.

At the outset I might make it clear that I do not want society to stagnate. I am not one of those who would say that social laws should remain as they are, I would like to change them as times change. I am not so orthodox as to say that we have no right to march with the times. Nor am I of the opinion that this House is not competent to enact this legislation on account of its being elected indirectly or on account of lack of a special mandate as regards this Bill or on account of any other reason, I feel that this House is competent to enact any legislation and hence this Bill also is within its competence. In spite of all this, I feel that I cannot lend my wholehearted support to this measure as it stands.

If the original scheme had been adhered to as suggested by the Rau Committee, perhaps certain portions of this Code might have been passed without opposition. There must be unanimity on certain branches of this Code. But I will confine myself to certain points only and therefore I do not want to touch on all aspects of the general principles of the legislation.

The Preamble says that the Bill is intended to amend and codify certain branches of the Hindu law as now in force. But when I look into the Bill, I find that there is nothing of Hindu law that is being codified here. Divorce is being taken from the Christian countries and the law of inheritance from Muslim law. To me it is rather a misnomer to call it a codification of Hindu law.

Dr. Mono Mohon Das (West Bengal : General): There are so many castes and tribes in the country among whom the divorce custom is prevalent. Are they not Hindus? Does the hon. Member want to get rid of them?

Sardar Hukam Singh : If you will permit me, I will come to that question later. I hope you will have the patience to hear me.

As I said I will confine myself only to certain points so far as my community is concerned and will not go beyond them. In the Preamble, it is said, that the Bill is intended to amend and codify the Hindu law and I repeat that I do not find that in this Code. If

as we were told by the Mover at the outset that 90 per cent, of the people have divorce, I have no objection and let them remain as they are. You might call that Hindu law but not this system you are introducing in this Code.

In clause 2, it is said that this Bill applies to Sikhs as well. It would have been a matter of gratification or even of much pride to us, if Sikhs had been included among Hindus for the conferment of certain rights. But what I find here is that as soon as the embrace is extended in clause 2 a severe blow is dealt to all coustoms and usages by clause 4. All custom is gone and usages eliminated. I must submit here that "custom" in clause 3 has been defined as "having been continuously and uniformly observed" and that it must be "certain and not unreasonable nor opposed to public policy". Why should such a sacred rule of conduct be treated with such contempt that it should be ruled over once for all? I have grave objection to that. My objection is particularly based on this fact that my Province, namely the Punjab, is a Province where custom is the first rule of law. In all matters like divorce, marriage, succession, inheritance, wills etc. custom is the first rule as is laid down in the Punjab Laws Act. They have those customs which they observe from a long time and everybody in the village understands what that rule is which he is to observe. There have been judicial pronouncements on these customs and they are ordinarily understood by every villager, There is no dispute about that. Therefore, I feel that this change would bring about a fresh phraseology and would create complications for simple peasants who have all along understood their laws well.

My second objection is about marriage. I might make one observation here. It might be said that the Sikhs have all along been governed by Hindu law up to now. But what I object to is the change that is being brought about. I have no objection absolutely if the Hindu Law were to continue as it is. But as the changes are being brought from outside, I feel the Sikhs must have a grievance and feel that either customs should be allowed to remain as they are or they should not necessarily be bound to revolve round the wheel as it goes on. I was referring to the marriage question. Of course I feel that in Hindu law or in Hindu culture the wife has so long been advised to merge herself into the will of the husband. She has been an embodiment of sacrifice. That has been her nobility and greatness. If now our females feel that they have been subjugated for so long a time, that

they have suffered and that they are not prepared now to continue to suffer, I would certainly advise my brothers to take up the subordinate position. But I feel that this insistence on equality in every matter and in home life would not be conducive to happiness or peace in the family.

Then again my complaint is that only two kinds of marriages have been recognised in this Bill. One is the sacramental form and the other is the civil form. I must inform the House, though I believe, most of the Members would be knowing it already, that the Sikhs have another form of marriage which they have observed for the last one hundred years. That is called Anand marriage ceremony. That is a simple form. The couple are brought before the Guru Granth Saheb, they take a vow and go four times round the Granth Saheb, then offer prayer and then the marriage is complete. Now, it is not civil marriage because it has not to be registered anywhere. It is not scramental marriage because the *sapinda* relationship or the restrictions of prohibited relationship degrees are not adhered to strictly. Therefore what I am afraid of is that this form of marriage that we have been observing for so long would not be a valid marriage. Doubts arose in the beginning of this century and then a particular Act had to be passed in 1909—the Anand Marriage Validating Act—when it was enacted that all marriages solemnised according to this form were valid. But now, as I read it, I am doubtful whether this marriage will be recognised under the Hindu Code. Therefore, I feel that the Sikhs would feel much concerned over this and would have grave apprehensions over this matter particularly. I want to bring it to the particular notice of the Mover that, left to themselves, they are not prepared to forego this form of marriage and he should take particular note of this.

Mr. Naziruddin Ahmad (West Bengal Muslim): Such a marriage would be invalid under this Bill.

Sardar Hukam Singh : I also feel that it would be invalid under this Bill and that is why I am submitting the position before the House and before the Mover particularly.

Then I have to submit one observation about divorce. It has been said that divorce is already there among a large percentage of the population. It may be. My appeal is this. If it is there let it go on. Do not restrict it with certain conditions that would make it more expensive. An ordinary man would feel that this change is not for

the better but for the worse. If they have an easy mode of dissolution of marriage now and are hereafter being compelled to resort to some more complicated and more expensive method, certainly they would not welcome it. It is argued that there are evils creeping. The bill is a permissive one. That there is no compulsion for anybody, but we have to be on our guard whether the remedy proposed is not worse than the malady itself. There are evils no doubt to a certain extent. But if we loosen the bonds, a small percentage of the population would be happy to break all ties and secure relief from their self-created miseries. But what about the large minority? Would you not be opening a trap for them, and a temptation to make mistakes, and have a trial of their future as they will realise that there is a way out to end it?

Then I come to my second main point and that is about adoption. Adoption in my province, that is the Punjab, is a peculiar institution. It is called the customary appointment of an heir. It has nothing to do with religion. It is a simple declaration for practical purposes, where the owner of a land nominates a person who is to be his assistant for cultivation during his lifetime and an heir to his farm after his death. As I have said, it has nothing to do with religion. There is no restriction as to age or as to relationship. You are now proposing in this Code that a daughter's son or a sister's son may be adopted but I must convey to you that already in the customary appointment of an heir daughter's sons are most ordinarily appointed, sister's sons also are appointed. There are absolutely no restrictions. A young man can adopt a man of his farmer's age, a man with many sons might be appointed as an heir. That might look strange to some people here but I tell you that it is a fact. A married man, a man with children might be appointed an heir. That is a most secular institution; it has got nothing to do with religion. How are you going to provide for such an institution? Are you going to throw it out? Surely that has the sanctity and sensation of ages, it is so popular in our part of the country that it cannot be thrown away like that. People would not submit to it so easily and so far as this part of the law is concerned, it would be a dead letter if it is pressed and forced on our people there.

Then there is the question of succession. I agree with my friends that our females, sisters and daughters, should have a share in the property, but I cut it short by saying that I agree with my learned friend Dr. Bakshi Tek Chand when he enunciated some time ago that

they should have a share in the father-in law's property and not in the father's property after marriage. I have particular reasons for that because as I have stated the circumstances of my province are very peculiar. The Punjab is a province of small peasants; small farms of three or four acres are the ordinary holdings. Such a person cannot be expected to have more than two bullocks which he might have secured after raising some loan, one *hal* and one *panjali* and one *gadda* also to take manure to the field or to bring fodder from the fields to his house. The Code would not apply to agricultural land, but what about the movables? What about his bullocks? Take the simple case of a family with one son and one daughter. The father dies, these movables are to be divided among these two. *(An Honourable Member : Why not ?)* I don't say that , I say it must be divided. Ordinarily they would have a cow as well and I think the Mover would have to give us the mode of dividing that cow, *hal* and *panjali*. The son-in law who comes from a distance, of say fifty miles, is interested in that part of the country; here he cannot live with this brother-in-law because the four acres holding cannot provide him with anything. His interest is elsewhere and therefore he must divide the property and go away. The sister would demand her share; surely she will take away one bullock, one half of the cart, one half of the *panjali* and would go away never to come back, thanking the framers of this Code, and of course not to be welcomed again ! *(An Honourable Member*: The brother's own brother-in-law will thank him !). That is a very easy question that is put, but it is not realised that when there are more than one-two, three or four—brothers in the East Punjab, they join the army, they are adventurers, they have gone to the farthest corners of the world to Argentine, Brazil and South America. They bring money from there and buy more lands, they live together with a common kitchen.

Sir my submission is that this provision would create difficulties. I agree with my learned friend Dr. Bakshi Tek Chand that so long as the daughter is unmarried she must have a share in her father's property, but as soon as she is married she must be transferred to her father-in-law's, there to have an equal share with right of partition and everything else. I am not against giving a share to the females— I might not be misunderstood in that respect.

I am afraid that our educated girls have much leisure. An ordinary girl, when she gets educated, does not absorb herself in the household

duties, therefore she has not enough work to keep her busy in the house.

[At this stage, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) resumed the Chair.]

The State should provide occupation for their leisure hours, give them useful and constructive work to do. Legislation like this and divorces would not root out the evils that you want to eradicate. Before destroying the joint family, the State must provide for old-age maintenance, illness allowance and several other things. If the pious duty is gone a mere charge on property would not do. The effects of this legislation, so far as I can think out, will be further fragmentation, love and sympathy, eliminated divorce and partition courts in larger numbers, female infanticide promoted, and care and attention of children neglected.

Shri V. I. Muniswamy Pillay : *rose—*

Shri B. Das (Orissa: General): Sir, are we continuing till 7 O'clock..

Mr. Deputy Speaker : I have no objection to sit till 7 o'clock. What is the general sense of the House?

Some Honourable Members : No. no.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, we can sit as long as there is a quorum.

Some Honourable Members : No, no.

Mr. Deputy Speaker : I have heard sufficiently. One voice cannot multiply itself into many. How long is the hon. Member likely to take?

Shri V. I. Muniswamy Pillay (Madras : General): About fifteen minutes.

Shri L. Krishnaswami Bharathi : Sir, the idea is to give opportunities to as many Members as would want to speak. It is rather surprising that people don't want to speak. I suggest that we sit as long as people are ready to speak and we are here to hear and when there is no quorum we will automatically stop.

Shrimati Purnima Banerji (U.P. General): The argument forwarded by hon. Members is that many members want to speak on such an important measure as the Hindu Code. When there are so many of us who are willing to say what we want to say and can be accomodated what is the objection to sitting till seven?

5 P. M.

Mr. Deputy Speaker : I entirely agree. If majority of the members are willing to sit and speak I have no objection.

Some Honourable Members : Yes, we are willing.

Mr. Deputy Speaker : Very Well. Let Mr. Muniswamy Pillay finish. We will see.

*** Shri V. I. Muniswamy Pillay :** Coming as I do from a community that was at the outside of the Hindu Society for centuries, I welcome this measure of religious and social reform. We, who form one-sixth of the population of India, welcomed the advent of Mahatma Gandhi who revolutionised the Hindu society so that not only Caste Hindus but all sections of the Hindus could have an equal place. Some of the friends who preceded me said that religion was in danger. I do not know wherefrom and in what from their objection springs. This country is proud of many *Avatars*—Lord Buddha, Sankara, Ramanuja—and great social reformers like Ram Mohan Roy and in the present century, the great Mahatma Gandhi who found that untouchability was eating into the very vitals of our nation and himself showed the way for inter-caste marriage. All these reforms show that we are in line with the present age. Whenever any social reform came up before the legislatures, obstructions were placed in the way, so that reforms may not come about. Coming from Madras, I may inform this House what kind of trouble we had when the Temple Entry scheme was before the Madras Legislature. Even in the matter of removal of social disabilities of untouchables, the Ministers had to find themselves in the midst of people who threw chilly powder in their face. Such is the state of affairs when we bring social reform in this country. The great Sankara who brought *Advaitism* to our land, when he was asked by his Guru "Who are you?" he said:

न मे मृत्युङ्का न मे जतिभेदः।

पिता नैव मे न माता न जन्मः॥

न बंधुर्न मित्रो न गुरुर्न शिष्यः।

चिदानंदरुपः शिवोडंह शिवोडहंः॥

These were the words uttered by the great Sankara. He never differentiated man from man, woman from woman. He thought every one was equal. I do not understand why there should be so much opposition to this Bill. In the South the great philosopher. Thiruvalluvar has given to the world tenets as to how a man and woman should

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 611-14.

move; what are the conditions under which they should live. They are pearls. I do not understand why there should be objection to the woman getting equal share in all amentities that are given by God to the human beings.

Some of the members who preceded me said that the time is not opportune. This measure has been before the country ever since the resolution of the Central Assembly was adopted on 20th January 1944. This Hindu Code has reached the nook and corner of India and not only educated men but the masses in general have understood the theme of this legislation. I do not know whether such members, as told the House that it is not competent to deal with this Bill, are talking with a sense of their responsibility to the country. I do not know whether members of this Assembly who have the proud privilege to produce a Constitution for thirty crores of people, which has been welcomed not only in India but in foreign countries, are not competent to deal with this Bill for the uplift of women in this country. We have clearly laid down in the Fundamental Right of the Constitution that the State shall not discriminate on grounds only of "religion, caste, sex....". We have got again Article 15 (3) which says that "Nothing in this Article shall prevent the State from making any special provision for women and children." Again in Article 46, it is stated : "The State shall promote with special care the educational and economic interests of the weaker sections of the people....." do not women come under this category , and ought they not to be protected? After all, this legislation is a permissible one and ought to be welcomed by everybody.

If you study the rules regarding marriage, inheritance, adoption and all these things of Hindus in the different provinces, you will find that they are not the same. They differ in many places. In the Constitution we have said that we must evolve a common Civil Code. This legislation is, in my opinion, the forerunner before we come to that stage. I come from a district where there are a lot of hill tribes. Their marriage ceremonies, laws of inheritance etc. differ substantially from those of Hindus, although they profess to be Hindus. Among the picturesque *Toda* aboriginal community, there is poligamy and due to this social evil the community is dwindling. The ceremonrials of the other tribal community of *Badagas* also differ from those of Hindus, although they profess to be Hindus. The custom among them is that when a man wants to marry a girl, he has to pay dowry— what they call *Thiraipanam*. After that, if the woman wants to go away from the husband and if another man were to pay the same dowry i. e., *Thiraipanam*, the woman is free to choose another man.

In a land which has produced great saints and sages are we to continue these things? Whether it is the tribals or hill tribes they all have to be protected according to the New Constitution.

Sir, in Madras province, as has already been observed by some of my hon. friends, poligamy has been statutorily abolished. Now, unless we codify the law for the whole country, it is open to a man to leave Madras, get married in some other province and return to Madras. Unless there is a uniformity in regard to the law obtaining in all the provinces, it is not possible for the Madras province alone to have this law enforced.

The other cardinal points of the Hindu Code Bill which is now before the House are the chapters relating to marriage and divorce. It has already been pointed out how essential it is to have both civil and sacramental marriage. According to this, the Scheduled Castes find that the *yogam* must be performed and the ordinary *thali* tied. Then only does the marriage become true, Even now after the Civil Marriage Acts have come into force, I find people taking to this. I can find no reason why the same method cannot be adopted throughout and for all Hindus, orthodox or otherwise.

Clause 33(f) makes reference to "adultery". I wish that the word "adultery" had not been used at all in the Code, for, as was pointed out by Swami Vivekananda, so long as there live three women in our land the chastity of India will be upheld. I do not think, Sir. that adultery is largely prevalent in any section of the Hindu society. There may, of course, be rare cases. But there is no reason why that should necessitate a statutory provision.

In sub-clause (2) of clause 9 and clause 16, I find penalties in regard to people breaking the law. The amount specified is too high, particularly for the poorer section of the people. I feel that it must be a very nominal amount. In the matter of judicial separation it is all right in the case of people who have got money and can afford to go to the courts to get a dissolution. But what about the villages in which India abounds. Communal panchayats consisting of members chosen by a few people will decide the matter, I do not think this procedure is correct. I think some formula must be evolved which will lead to the constitution of representative panchayats which will decide cases of dissolution.

Next I come to the question of *stridhana,* that is what is given to the women either by her father or by her brothers. What is to happen

if it is not properly used by the husband. I feel Sir, that some clause must be inserted so that the *stridhana* may always remain the property of the woman.

Clause 72 which deals with adoption says: "No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such and return to the family of his birth." I think, Sir, if the son or anybody who is adopted were to misbehave and squander the money of the family, there must be a saving clause whereby such a thing could be prevented.

Section 93 deals with the dowry to be held in trust for wife and says that it shall come into force after the commencement of this Code. I feel, Sir, that section must apply to all cases existing before the commencement of the Code.

Sir, I would finally point out that bringing this Hindu Code into force will greatly relieve all those women who are under the harsh treatment of men. Many people have been saying that the women are enjoying equal privileges and facilities. But in reality it is not so. In a few cases it may be so. But about 90 per cent of the women are still suffering from many social hardships. Out of the four *yugas, Krita, Treta, Dvapara* and *Kali,* we are now in the fourth *yugam*, iron age and are strong to bring in reforms. We must see that the women enjoy as many facilities as men. It is said that the hand that rock the cradle shall win the world. Before they grasp forcibly these facilities let us give them peacefully. I, therefore, support the Hindu Code Bill that has been brought by this Government and when it has come into fruition I might say that my hon. friend Dr. Ambedkar who has taken so much of trouble would have added a further feather to his hat.

* **Shri O. V. Alagesan** (Madras : General) : Sir, yesterday Dr. Ambedkar said that he was very glad that it had fallen to his lot to pilot this Bill. Sir, his name is sure to go down in history as the able midwife that assisted at the birth of the Constitution of free India. Sir, he is ambitious. He wants to add a further feather to his cap and he is justified. His ambition is to supersede the ancient rishis, Manu, Yajnavalkya and a host of other ancient law givers.

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 614-21.

One of the previous speakers— I think it is Mr. Pataskar—made a reference to Section 44 of the New Constitution which relates to a uniform civil code for the whole country. He pleaded and asked: "Why not withdraw this Hindu Code and have a Civil Code? It may sound like pleading for postponing the day of mischief. But why does not Government come out with a statement of policy on this question? Is this a first step in that direction? Would they bring in more measures to put into effect Article 44 of the Constitution following this? I do not want to embarrass the Government, but all the same I would appreciate a clear statement of policy from the Government.

Sir, the other day it delighted everyone's heart to hear the hon. Mr. Santhanam pleading for monogamy. He challenged anybody to raise his little finger against this institution. Saint Tyagaraja admirably summed up Rama's character in his own inimitable manner in these words:

Oka mata, oka banam, oka pathni,

That is One word, one arrow and one wife.

We are all glad that that ideal has been placed before us. Sir, I ask, is it good only for the Hindus? Will the Government bring forward a Bill common to all and make monogamy applicable to all citizens of India ? I say this not to embarrass Government. I would like to repeat. When it is put in this manner, you will have to put the problem in its proper bearing. You will remember that there is a community in India which will object to it on grounds of religion and you will also remember the unhappy happenings that followed the partition in this country. You will be saying that it will be an interference with religion, that it will be against the secular nature of the State. Now the Prime Minister has declared that our State is going to be a secular one. We should educate the people on the secular nature of the State. There are many things that are happening on the other side of the border which are sure to have their reactions on this side. That State is based shamefacedly on a theocratic basis and they propose to carry the full implications of that policy and such a policy on the other side cannot fail to have its reactions on this side. So, people begin to entertain misgivings about the secular nature of our State. They understand it in this light and there is good reason for that, that secularism means meddling with everything Hindu, and fighting shy of any other group. That is the way in which the general mass of the people in this country react to measures like this.

So in the interests of the secular State that we want to establish in this country, we should try to carry the people also with us. It is no good Government alone saying that we are a secular State, and if that is not properly understood, properly appreciated by the general mass of the people in the country, then the State cannot long continue to be secular. We will be losing the ideal that we want to realise in this country and we will be postponing the day of such realisation. That is why, Sir, I say that people are at present not in a proper mood. They are sullen. They are in a pique; just as a child which is in a pique refuses to eat even the sweetest thing, people are not in a mood to appreciate this reform. Even though it may contain some good parts. So the best thing would be not to press down the throats of the people anything which they do not want. Dr. Ambedkar last time quoted Burke. He struck a gloomy note and gave us a warning just as he did at the conclusion of his speech during the third reading of the Constitution He said :

"Anybody who wants to conserve should be prepared to repair."

It is very good, Sir, we should be prepared to repair, but does this Bill represent mere repair? I should say it pulls down the house in which we have been living. It wants to plan a new structure. It wants to make structural alterations. It is not mere carrying out repairs here and there. It is a structural repair. I should say that it is a new structure that it wants to put in the place of the old one.

The Honourable Dr. B. R. Ambedkar : All repair is structural repair.

Shri O. V. Alagesan : I have no objection to carry out even structural repairs, but before carrying out such structural repairs, this House itself should undergo a structural repair. That is what I want to say. By saying this, I do not minimise even by an iota the representative and sovereign character of this House. Sir, when we put through other legislation— Prof. Shah was labouring this point— nobody is surprised. It is a routine matter, but this is treated on a different basis. This is viewed with suspicion, with anger. That is the reason why I say we should discriminate, and allow the House that will have been structurally repaired to carry out this reform with greater confidence and with a degree of success which can be attained by then.

Sir, another point is the atmosphere in which this Bill is sought to be pushed through. Sir, there was a great one in this country who led our thought and action. Even though we were slaves he taught

us to think and act like free men and we followed him. That was the tradition that he established. Long before this country was technically free, he ushered in an atmosphere of free thinking and action. But unfortunately, he is no more with us to guide us, but his example is there for us to follow. Even on a matter like the abolition of untouchability, temple entry and such allied matters, he advised that we should not accomplish those worthy objectives by means of legislation. He presuaded and preached to the people the necessity for such measures. He even imposed suffering on himself. That is how he brought about this mighty reform and it has become an established fact today. It is that way that we should follow and not force down reforms upon the throats of unwilling people.

Shri V. L Muniswamy Pillay : It is for you to educate them.

Shri O. V. Alagesan : We should go about the country and educate the people. The general elections are coming very shortly and that will be the best time for it.

Shrimati G. Durgabai (Madras : General) : That is the whole fear.

Shri O. V. Alagesan : That will be a wonderful opportunity to educate the people on the various provisions contained in this Bill. There is much force in what the Congress President said yesterday. The Labour Government in Britain, how does it function? It has postponed a very important measure, a Bill for which they took the permission of the electorate. It had the sanction of the electorate but after taking note of the situation in the country, they have postponed it till after the general election. They are going to take the verdict of the people afresh and then push through the measure. When such is the case in regard to a matter on which the permission, the sanction of the electorate had been obtained, then I should think it is much more necessary in this case where we did not give even an inkling of our ideas to the electorate. Sir, we have seen the spectacle of this Bill being debated for two days in every session. It is like the promise for renewing the gold bangles for the next deepavali. That is how we have been going on and it is good that we go on like this, because, who knows even the sisters who have given their enthusiastic support to this Bill may change their minds tomorrow and they may try to improve it on their own lines. After all one does not remain static and more so woman.

Shrimati G. Durgabai : There are also some men who change their opinions.

Shri O. V. Alagesan : The great poet Valmiki who is the Adikavi of our country said this. The reference is only to the general characteristics of women. This does not apply to anybody in particular. Valmiki said :

Sathahvadhanam lolathram

That is :

Women change as lighting.

That is what he said.

Similarly they can change their minds and try to improve. I should like to ask you and the House whether they have not gained by waiting so far. They have gained because in the Rau Committee recommendations, the daughters had only half a share and now according to Dr. Ambedkar's Bill, daughters will be getting equal shares with the sons.

Again Sir, if they wait, they may get more. Daughters may get two times. Also we have heard on the first day the hon. Mr. A.K. Menon. The other day in a different place we heard Mr. Thanu Pillai., They are very anxious about this and they feel that they are being pushed back instead of being pushed forward. While the rest of India is pushed forward, the Malabaries very strongly feel that they are being pushed backward under this Bill. Sir, they may convince others and the whole land may come under Marumakkattayam, though the matriarchal system is disappearing elsewhere. Our friends from Malabar may be able to convince the other hon. Members of this House and then the whole thing may be Marumakkattayam and that will be a brighter prospect. They will not lose anything by waiting because they have got persuasive powers; they can persuade, they can seduce, they can manage all these things.

Mr. Deputy Speaker : The hon. Member need not use that expression.

Shri O. V. Alagesan : I am sorry. I withdraw the word.

We witnessed the wonderful spectacle in this House, Sir, of a speech which began as a wonderful satire and ended in a sorrowful sermon. Overnight the satire was converted into a sermon. So when we see this, nothing is impossible. It can be improved even according to the protagonists of this Bill in a very radical way and they may have a better Bill if they wait and then they can have the satisfaction of having taken the permission of the country also for that.

Sir, I should like to put another point of view. What is the approach that this Bill makes towards the problem? The approach is that inequality exists in the Hindu society between man and woman. I should very respectfully submit that this conception of inequality between man and woman is a biblical conception. The Hindu conception is that of *Ardhanareeswara,* that is of man and woman being equal. That is our conception, Sir, that is the basic Hindu conception. I do not say that it has been entirely translated into practice and I do not make that claim, but that is the basic conception of Hinduism. The conception is not one of inequality, but it is one of dissimilarity. If man represents strength woman represents endurance; if man represents intellect woman represents enlightenment; if man represents grammar, woman represents poetry. The great poet Kalidasa has described Parvati and Parameshwara as word and meaning and that is the basic approach. You do a basic wrong when you approach this question from the point of inequality between man and woman.

Again Sir, I should like to point out that the present atmosphere is not a free atmosphere because we have never examined our institutions as an independent nation, especially on this subject. It is not Yagnavalkya or Manu that is so much current as the British courts and we have never had on opportunity to examine our Indian institutions with a dispassionate and an unbiased open mind. Always the bias of western ideas and western notions had been there. Though our political slavery have been removed, still the spell of western civilization and ideas continues. So, it is better if some time elapses and we may be able to view and examine both the good and bad points in our institutions in an independent way, in a fresh way and that will give us an opportunity to mend this Bill and even improve.

Sir, another reason behind this Bill is a sense of injustice done by man to woman. I do not want to repeat all the things that have been said before, both in humour and seriousness, but, Sir, I can claim that there has been no injustice done to woman by man. I should like to say that it is only a mental aberration of high strung natures due to unattached circumstances which enable one to do anything except lead a normal life. That is how I would put it. In this land nothing has been done by man to wrong woman. I should like to examine some of the arguments put forward by the other side. Sir, I find a growing practice among the occupants of the Treasury Benches.

When a bill is generally debated, they say some people have opposed and others have supported and hence this Bill represents the largest common measure of agreement. That is a very easy way of disposing—and I do not think the learned Minister in charge of this Bill will do it and I have no doubt about it. It is not the largest common measure, but the least common measure, I would say.

Then, Sir, it is said that opposition to this bill is based on prejudice and sentiment and not on reason. I should like to point out that support is also based on the same blindness, on the same prejudice and on the same unreason. It is not as if support is enlightened and only opposition is ignorant.

Again, Sir, it is said in support of this measure that this is only an enabling and permissive measure. It was said in another place that the orthodox can go on in the old way without interference and the reformers also may go their own way or it permits such of those who want to take advantage of the provisions of the Bill to tread their path and leave others entirely free to pursue their own path. I think Dr. Ambedkar said it. Sir, this is like enacting a general law of licence and saying that such of those who want to take advantage of it can do so. The plea that it is only a permissive and a enabling measure, in my opinion cannot hold water. Then it is said that there has been opposition in the past to Bills of similar nature like the Sarda Act. This stands on an entirely different footing. There is difference between that Act and this Bill.

Dr. Tek Chand was saying that this Bill has been before the country for a very long time and so we need not wait any more. It is true that the Bill has been before the country for a number of years. But then the Congress was not in office and so nobody took it seriously. As soon as the Congress came into office and Dr. Ambedkar piloted this Bill as a Minister of the Congress Party, then everybody took it seriously, and they now know that it will be put into force, and that is why, I say, the people should be given an opportunity to examine this Bill. There is difference between the position that it occupied so far and the position that it occupies now.

Sir, It is also said that many women who are opposed to this Bill, do so under the influence of their men-folk. This, I think, is an unfounded charge. May I ask whether the women who support this Bill are displeased with their husbands ? Or, may I ask whether the man who supports this Bill do so under the influence of their womenfolk ? It is no use putting forth such frivolous arguments.

Shri B. Das : There is nobody here to answer these questions.

Shrimati G. Durgabai : Can you say that they are pleased with their husbands when they marry again and again ?

Shri O. V. Alagesan : I am coming to that Madam, please have a little patience.

Shrimati G. Durgabai : Please answer that question first.

Shri O. V. Alagesan : Yes, I will, in my own time and in my own way.

Pandit Govind Malaviya : May I know till what time we intend sitting ?

Some Honourable Members : Six o'clock.

Some Honourable Members : Seven o'clock.

Mr. Deputy Speaker : I am finding the House getting thinner, and thinner, and when it is quite thin I will get up.

Sjt. Rohini Kumar Chaudhari : Let us rise for tea, now Sir.

Mr. Deputy Speaker : No, the hon. Member will finish soon.

Shri O. V. Alagesan : Sir, the justification for a measure of this kind can be two-fold. There should be a conscious demand from the public for such a measure; or a few people, who have set their hearts upon a measure of reform, may think that it is good for the entire community, while the community may not be conscious of the goodness of it. Then it is the duty of those, who think that such a measure of reform is beneficial to the whole community, to go and educate the people about the soundness of their stand. I only plead that the people who bring forward this measure and who believe that this is a measure beneficial to Hindu society, that they should go and educate the people. I do not want anything more from the protagonists of this Bill.

Shrimati G. Durgabai : They have done it.

Shri O. V. Alagesan : My sister here says that they have done it already, but I should like to point out that the claim made by these reformer friends, this microscopic minority, that may speak on behalf of the majority of the Hindus, is the tallest claim ever made. They should have patience, and as I have pointed out earlier, they should educate the people about the goodness of this Bill, and not rush it through to have some satisfaction.

Another important thing I wish to point out is this. If this Bill is rushed and passed into an Act, then portions of it will remain a dead letter just as the Widow Remarriage Act has remained a dead letter

though enacted a century ago. So if you do not want it to remain a dead letter, but that it should be taken advantage of by the members of the community then it is better to wait and educate the people.

Now I would like to pass on to a few of the important observations made by Dr. Ambedkar. This Bill seems to be a Law of Exceptions. Dr. Ambedkar said that the coparcenary system allows ten categories of property to remain outside the purview of the coparcenary. They form private property. So he says, because it has granted so many exceptions, let it, once and for all, go. That is one of the points that he has made. And then he says, woman has absolute right to *Stridhana* and so let it be so for all property. And also that this coparcenary system has the seeds of disruption in itself, and so let the joint family go. I would ask him ; he has just now passed the Constitution and the various provisions in the Constitution, as you know, are riddled with provisos and exceptions. For that reason, are we to make the exceptions into the main articles? When you look into the pleadings, it looks as if one has to make the exceptions into the main law.

Then again, Sir, this Bill about which my sisters are so enamoured.....

Shrimati G. Durgabai : Brothers also.

Shri O. V. Alagesan : This Bill does not in my opinion deserve it. Monogamy has been praised by one and all. It is not such a new institution. Women have been having monogamy in this land, but were there divorces provided? As soon as men are brought, within this law of monogamy there is demand for provision for divorce. As long as woman was under monogamy, there was no provision for divorce, but now they say divorce is the natural corollary of monogamy. Why are my sisters so very enthusiastic about it ? What is the meaning of it? If divorce is the natural corollary of monogamy, how is it that this natural corollary did not come into existence so far?

Mr. Deputy Speaker : How long further will the hon. Member go on?

Shri O. V. Alagesan : Only ten more minutes, but I shall try to cut short. So I say it is not a very pleasant thing to be given the right to divorce. I do not want to read out extracts, but many women have pointed out that this divorce would work greater havoc for women than for men.

Shri A. Thanu Pillai : Is the hon. Member advocating monogamy without divorce?

Shri O. V. Alagesan : I want monogamy without provision for divorce. Sir, what this bill gives with one hand it takes away by the other.

Dr. Ambedkar, in justifying the provision for divorce, has enumerated the difficulties that the women who are deserted by their husbands nowadays are made to undergo. All these difficulties the divorced women will have to undergo. The prospect for the divorced woman is as bleak as the prospect is today for the deserted woman. It is easier for the divorced man to marry again and it will not be as easy for the divorced woman.

Dr. P. Subbarayan (Madras : General): So you want a double standard.

Shri O. V. Alagesan : I want my sisters to make note of it and beware of the pit to which it leads them.

Even on other grounds I would very seriously object to the provision of divorce. What is the experience of other countries? This has been touched on by other speakers and I do not want to enlarge on it. Recently we were told that the number of divorced cases in Paris alone increased from 600 to 1200, which is only 100 per cent increase.

An Honourable Member : There is no Paris in India .

Shri O. V. Alagesan : I am glad there is no Paris in India just now but I am afraid the Bill tries to usher in Paris in India.

Shri L. Krishnaswami Bharathi : Baroda is there and Malabar is there.

Shri O. V. Alagesan : In one of the most advanced countries in the world, Soviet Russia, the family as an institution is breaking up. Soviet Russia is hard put to resuscitating the family as an institution, having allowed easy divorce. They now want to inculcate the sacredness of the family as an institution and infuse communist morality into their citizens. They are trying hard to save this institution which they have lost by lightly introducing divorce in their land. One had only to write a postcard to the Registrar saying that he is divorcing his wife and he had his divorce. I understand that they have now made their divorce laws more difficult. There is an example before us.

Shri L. Krishnaswami Bharathi : What about Malabar? Why go to Russia and Paris?

Shri O. V. Alagesan : There they have tried this method and found it dangerous. Why put ourselves in the same situation and again try to remove it ? Our Indian homes today are poor, steeped in ignorance

and ill-health, but it cannot be said that our homes are broken ones. In other countries they may be rich, healthy and very enlightened but one is sorry to note that many of the homes in other countries are broken ones and that is entirely due to the license given in their divorce provisions. That is my opinion.

Such an eminent person like Dr. Tek Chand said that the joint Hindu family should be kept and wife be made a coparcener in the family. I should like to say that the real economic independence of women would come not by giving a share to the daughter, to which I have no objection, but by giving her an equal share in the husband's property. That is how she will attain her economic independence. It is not by taking a share from the father's property. After all the daughter is a trust to be given away to the son-in-law. The father keeps the girl as a trust and it is therefore better and more proper that she is made a joint owner or equal sharer in the husband's property rather than made to claim a share in the father's property. She may claim a share in the father's property if she remains unmarried.

I do not want to dilate further but I should like to end on this note. The chief man who conceived the Code (though a gentleman found it difficult to conceive yesterday) was Mr. B. N. Rau and we may be sure that he is very anxious about this Bill. He would want to see all his proposals, though in a modified form to be put into effect as early as possible and I should like to read his opinion, which has also been the opinion of the Hindu Law Committee.....

Shrimati G. Durgabai : There was a select committee to consider those proposals; not he alone.

Shri O. V. Alagesan : The Hindu Law Committee has stated as follows :

> "The aim should be as far as possible to arrive at agreed solutions and to avoid anything likely to arouse acrimonious controversy. This need not mean any real slowing down of the pace of reform, for true reform proceeds by persuasion rather than coercion."

Sir, I have done.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Thursday, the 15th December, 1949.

* HINDU CODE—*contd*

Mr. Speaker : The motion that the House was considering was:

"That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration."

* **The Honourable Shri Jawaharlal Nehru** (Prime Minister) : Sir I crave your leave and the indulgence of the House to make a statement in regard to the Hindu code Bill and I trust that the Statement I make will meet the approval of the House.

When at the commencement of this Session, I referred in the course of my remarks to the Hindu Code Bill, I said that Government attached a great deal of importance to this measure and they hoped that this consideration stage would be passed during this session. At the same time Government were very well aware that there was a variety of opinion on this subject and a large number of people were interested in the provisions of this Bill. And, therefore, I had suggested then that we propose to follow a course which we hoped would lead to a broadbased agreement in regard to a number of controversial clauses in the Bill. I should like now to amplify that statement and to make clear the policy of Government in regard to this matter. We have had fairly prolonged debate on this Bill, not only in this session but in previous sessions. We had set aside two days on this occasion and as the House knows, those days have been prolonged on two occasions. Government had no desire and have no desire to restrict debate on an important measure of this kind and in spite of the fact that we have been very hard pressed for time—and we have very important legislative measures awaiting disposal during this session—we extended the debate on two occasions and indeed to day was also fixed for it.

While we have no such desire to restrict this debate, naturally Government is hard put to it to find more and more time, still we are prepared to find more time because of the importance of the measure and the desire of some Members of the House. But there was another aspect to this question and that was this; that if we are going to consider this matter in a spirit of trying to find an agreement as far as possible, in regard to controversial clauses, if, as I said we are going to proceed on the lines I indicated right at the commencement, then it is desirable for us at this stage to carry on this debate and

* C.A. (Leg.) D., Vol. VII, Part II, 19th December 1949, pp. 783-85.

perhaps produce an atmosphere, or help in producing an atmosphere, which does not lead easily to that kind of settlement? That was an important consideration which Government had in mind. Right at the commencement, as I have reminder the House, we had that in view. It was no intention of the government to proceed with this merely by virtue of a majority and complete acceptance of every clause of this Bill although there might be considerable variety of opinion in regard to it. The position of Government, so far as this bill is concerned is this. We stand committed to the broad approach of the Bill as a whole. We are prepared, however to consider every clause in a spirit of accommodation. Naturally, Government have put forward this measure as it is because they believe in it. But in such matters they desire to have as large a measure of support as possible. Now there is a distinction between that and this general consideration at this stage which is going on, and which they feel has been debated quite considerably, and a large number of Members of the House have participated in this debate. They attach importance to the conclusion of that stage of the debate so that they may take up the next stage of consideration, that informal consideration, as soon as possible. Now that informal consideration cannot effectively take place in that way until this first stage is ended. Otherwise we remain in mid-air, and we cannot get on to that next stage. So our proposal now is, and I venture to place it before the House, that we conclude this debate, on this consideration motion as early as possible. I would not mind government giving more time, even at the expense of other legislative measures; but I would submit to the House that if the general proposal to have this informal discussion is agreeable to the House, then it is desirable to go to that stage and not to vitiate the atmosphere by acrimonious debate any more at this stage.

When I talk about informal consultations, I should like to make clear what I mean. I say 'informal', not that I do not consider it important, but because I wish to give a measure of flexibility to that discussion so that my hon. colleague the law Minister, who has shouldered the burden of this Bill, and who I trust will gladly accept and give effect to the proposals that I have made, so that he can consult not only the Members of the Select Committee, but other Members of this House who are interested and may even consult others outside this House. Now, that would be difficult if a certain rigid procedure was adopted, and also when you adopt a formal and rigid procedure, it becomes a little more difficult for that attitude of free and easy

discussion, and give and take which might prevail more easily if the procedure were more flexible and informal. Therefore, I make this proposal to the House and I do submit that in this matter, having considered all the discussions and debate that we have gone through, this is a reasonable proposal which should meet with the approval of all sections of the House because it is an attempt, a real attempt on the part of the Government to carry some thing through this House and through the country with the largest measure of support. That does not mean that in any matter over which we may disagree violently we give up our opinions or surrender to anyone else's judgment. No one expects any Member of this House to do that if he believes in something. But it is the essence of democratic procedure for us to debate and consider and try to convince each other and try to meet each others points, but somethings giving up sometime so as to arrive at a decision which can be enforced with the largest measure of consent that is the procedure. I would submit to the House, that we should follow in this important measure also.

I do not wish the house to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because of any particular clause or anything, but because of the basic approach to this vast problem in this country which is intimately allied to other problems, economic and social. We have achieved political freedom in this country, political independence. That is a stage in the journey and there are other stages, economic, social and others, and if society is to advance, there must be this integrated advance on all fronts. One advance on one front and being kept back on other fronts means functioning imperfectly, and also means that the first advance also is in danger. Therefore, we have to consider this matter in this spirit, how we should advance on all fronts, always keeping in view, of course, that the advance is co-ordinated and meets with the approval of the great majority of the population. I say this because, after all, we function as a democratic assembly answerable to the people of India, and we must carry them with us. Keeping that in view it is not good enough for us and for this House merely to be led. We have to lead and we have to give the lead, and in giving that lead we have to carry others with us, and we propose to give the lead in this and in other matters, but always carrying others with us.

This, therefore, is the procedure that I have detailed, that is to say, that we may put an end to the present stage of consideration of this motion by adopting it, and then the House may permit Government to take those informal steps which I have indicated in regard to consultation about the various parts and clauses. That might be undertaken so that when the matter comes up again, as I hope, at the next session, it may have the support of a very great majority in this House and outside.

***The Honourable Shri Satyanarayan Sinha** (Minister of State for Parliamentary Affairs) : Sir, I move:

"That the question be now put."

Mr. Naziruddin Ahmad (West Bengal : Muslim): May I ask for a clarification ?

Mr. Speaker : I do not think we need take any more time now, specially in view of the very frank statement made by the hon. the Leader of the House just now. I may remind hon. Members that this stage of the motion has been debated for full nine days and to-day is the tenth day. Thirty three speakers have taken part in it and we have devoted thirty hours and twenty eight minutes. I think the time devoted is sufficient and.....

An Honourable Member : May I know**.....**

Mr. Speaker : I am not bound to give any reasons when I accept a closure, but I think I should also explain what I feel about it. I am convinced from the statement just now made by the hon. the Prime Minister that everybody inside the House and outside the House is going to have a full chance of having a say with respect to the various provisions of the Bill. The present stage is the stage of general consideration and we are not discussing any particular clause of any particular item. It is possible that people may differ about details and yet so far as the generality of the Bill is concerned, there might be a great measure of agreement. If we were to continue our discussion at this stage, I am afraid our discussion is bound to be very vague, general and rambling; perhaps it will consist of repetitions also. The more important stage, therefore, is the clause by clause consideration of the Bill and before that stage comes, hon. Members will have every opportunity of considering all questions and discussing them with the Government and also other people outside the House.

* C.A. (Leg.) D., Vol. VII, Part II, 19th December 1949, pp. 785-87.

Therefore, I think that proceeding with the further consideration of the Bill will mean practically a waste of time. I am therefore inclined to accept this closure and I would then call the Hon. Minister of Law to speak.

Sjt. Rohini Kumar Chaudhari (Assam : General): I would like to make a statement.

Mr. Speaker : What statement is the hon. Member going to make? If I permit the hon. Member to make a statement, everybody will feel entitled to make a statement. The hon. Member will please resume his seat.

Shri Mahavir Tyagi (U. P. : General): I want to have an interpretation from you, Sir whether, after this motion is adopted at this stage, would it mean that the House would be committed to the principles of all the clauses of the Bill?

Mr. Speaker : I will clarify the position. In fact, when the House accepted the motion for reference to Select Committee, it accepted the principle of the Bill. Now, in a Bill of this type, it is very difficult to decide what the principle is, because every clause may be made into a principle. I may make the position clear. Looking to the extent of the provisions of this Bill—its wide extent—it is clear that the only principle accepted by the House is that it is desirable to codify the Hindu Law and every provision of the Bill is open for discussion, alteration, change and all that sort of thing.

Shri Mahavir Tyagi : Then we have no objection Sir.

Sjt. Rohini Kumar Chaudhari : I want to make a suggestion to the House on this motion. Closure may be moved and accepted. I have no objection to that. I do not want any further discussion on that subject. As a matter of fact, in order to create an atmosphere of compromise, I have myself not spoken in opposition to it. What I want to suggest is that this motion may not be put to the vote now. We want to convince the opposition outside that a practical gain has been made by the announcement of the hon. the Prime Minister.

Mr. Speaker : I think that after the statement of the hon. the Leader of the House as regards the procedure and what I have said as regards what is going to be binding and what is not going to be binding, there remains no doubt as to the effect of carrying this consideration motion. In fact, it is not desirable to keep that point open so that when the consideration is again taken up, there may be further discussions and further inducements to speeches. I will therefore put the motion to the House.

Dr. P. S. Deshmukh (C. P. and Berar : General) : On a point of order, Sir. We have all heard the excellent suggestion made by the hon. the Prime Minister and there is no doubt that the House is likely to accept it. My point of order is that the question before the House is a motion for consideration. The suggestion now made really means referring the Bill back to the Select Committee.

Some Honourable Members : No, no.

Dr. P. S. Deshmukh : I put it to you, Sir, that this is circumventing the parliamentary procedure. The only procedure rightful and just, would be to commit the Bill to the Select Committee, either the same or an expanded committee. The suggestion made is against parliamentary procedure and should not be accepted. If the suggestion is acceptable to the House, I have not the slightest objection, but the regular procedure is to commit the Bill to the same Select Committee or a Select Committee, which may be enlarged.

Mr. Speaker : I see the force of the Hon. Member's objection from the procedural point of view, but what the hon. the Leader of the House has done is not to place any motion for further consideration before the House. He has merely explained his position. He has stated how the Government is going to act and how it will proceed with the consideration of the clauses of the Bill? There is no reference there for further reference to any formal Committee of this House. If such a motion were to be made, then of course I would have been glad to accept that point of order. At present there is no such motion before the House, and I think it is not against parliamentary procedure. On the contrary, even if it is a little different from the ordinary procedue, as, in my opinion democracy means a spirit of accommodation and give and take, we must evolve a new procedure. I will now put the motion to the House.

The question is

"That the question be now put."

The motion was negatived.

*** The Honourable Dr. B. R. Ambedkar** (Minister of Law) : Sir, there are before the House in all three motions. Two of them are sponsored by Mr. Naziruddin Ahmad. One of them proposes a reference of the Bill to the Select Committee for further consideration. The second motion proposes that the Bill be circulated for eliciting further public opinion. In addition to them there is my motion before the House

* C.A. (Leg.) D., Vol. VII, Part II, 19th December 1949, pp. 787-92.

which proposes consideration of the report of the Select Committee. I propose to say a few words with regard to the motions moved by Mr. Naziruddin Ahmad. The one thing that I have noticed in the course of the debate which has ranged over nine days, is that it has had no support even from the opponents of the Bill. At the most, only two members out of the thirty three, who have taken part in this debate, have favoured his proposition. The rest of them have not supported him at all. Secondly it is quite clear to those who have followed his speech which was for more than six hours, that notwithstanding the fact that he was questioned from time to time while he was speaking to give us the reasons why this Bill should again be referred to the Select Committee or circulated to the public, he has in my judgment not succeeded in giving us any good ground for supporting his motions. I therefore, think that it is unnecessary for me to waste my time as well as the time of the House in dealing with his two motions.

Now Sir, I come to my own motion. As you have said, there have been altogether thirty three speakers who have taken part in this debate. I would like to give to the House some idea of the measure of support and the measure of opposition exhibited by the members of the House to this measure. Out of the thirty three members who have taken part in this debate, something like twenty three have spoken in favour. Out of these twenty three, there were only two who have said that they were prepared to give only qualified support to this Bill. Three remained neutral; three were for circulation and four for the postponement of the consideration of the Bill. It is therefore, quite clear that a very large majority of the Members of this House are in favour of the Bill—as I said, as many as twenty-three.

Sjt. Rohini Kumar Chaudhari : But does he know that thirty-four persons who wanted to oppose the Bill, whose names were given had no opportunity to speak?

The Honourable Dr. B. R. Ambedkar : I am only making an analysis of the speeches of those who have spoken. *(Interruption).*

Mr. Speaker : Order, order.

The Honourable Dr. B. R. Ambedkar : Taking the matter a little further and analysing the stand taken by those who have opposed the measure in order to see which part of the Bill has been attacked, I find that in this Bill which seeks to codify the Hindu Law relating to eight matters, there are five to which there has been no opposition whatsoever.

Sjt. Rohini Kumar Chaudhari : Because you didn't allow us to speak.

Mr. Speaker : Order, order.

The Honourable Dr. B. R. Ambedkar : I hope, Sir my friend will not interrupt.

Mr. Speaker : The Hon. Member just now promised that he would not like to spoil the atmosphere of a compromise.

Sjt. Rohini Kumar Chaudhari : He is not to speak now that was the term of the compromise.

Mr. Speaker : Order order, No running commentary now.

The Honourable Dr. B. R. Ambedkar : As I said, Sir, the Bill seeks to modify and codify the Hindu Law with regard to Marriage, Adoption, Guardianship, Joint Family Property, Women's Property, Intestate Succession, Testamentary Succession and Maintenance. So far as Adoption is concerned, I have seen no opposition to this part of the Bill, nor to the part relating to Guardianship.....

Pandit Thakur Das Bhargava (East Punjab : General): I opposed some of the provisions relating to adoption and absence of provision for appointment of heirs.

The Honourable Dr. B. R. Ambedkar : Nor to Women's Property, Testamentary Succession and Maintenance. The only parts of the Bill to which there has been some opposition are those which relate to Marriage, Joint Family Property and Intestate Succession. Even with regard to these parts of the Bill, the opposition is concentrated on one or two points.

Sjt. Rohini Kumar Chaudhari : On a point of order, Sir, You yourself ruled that all these matters can be discussed when we come to amendments.

Mr. Speaker : Will the hon. Member resume his seat ? I think Members have to be patient and must not interfere when other Members are putting forth their points of view. The hon. Minister must be allowed to go on uninterrupted, and if hon. Members have to say anything, they will have a chance later on when the bill comes in for discussion here.

Sjt. Rohini Kumar Chaudhari : But, Sir if you don't allow us.....

Mr. Speaker : I do not propose to allow any interference at all.

Sjt. Rohini Kumar Chaudhari : To explain the position . . .

Mr. Speaker : Allowing to explain the position is again to go on replying at every sentence. I do not propose to allow anything of the kind. *(Interruption).* The hon. Member will not now interfere at all so that I may not be compelled to take a very serious notice of these interruptions or points of order or suggestions. But when I put the motion.....

Shri H. V. Kamath (C. P. and Berar : General): Did you say, Sir, that the Bill would again come up for discussion?

Mr. Speaker : The clauses will come up for discussion.

Dr. B. Pattabhi Sitaramayya (Madras : General): May I respectfully make a small suggestion? This is going to be discussed or not— the question of the consideration motion being accepted. Therefore, whatever statements are made by the hon. Minister in charge of the Bill, they will go unchallenged. And so long as they go unchallenged a vote cannot be correctly obtained. The hon. Mover has been absent for a number of hours and he is not posted with information as to what has been said or what has not been said. For instance he says that on the question of 'Adoption' there was no opposition and here is a gentleman who rises and says that he did oppose those provisions. I would therefore request that the hon. Minister will not make his reply controversial.

Mr. Speaker : The point is as I have understood the hon. Minister that he is trying merely to summarise his point of view.

Dr. B. Pattabhi Sitaramayya : No.

Mr. Speaker : Order, Order. Let hon. Members not interfere. I believe he is perfectly entitled to lay before the House his point of view. It may be correct, it may not be correct. Therefore, when he is replying, his reply has to be heard for what it is worth. Hon. Members should not immediately get up and say "this statement is wrong" or "that statement is wrong" because we will then be drifting into a controversy. Let us hear him. And the best method of democracy is to be patient with the opponent.

Sjt. Rohini Kumar Chaudhari : Can we not reply to the wrong statements made?

Mr. Speaker : No reply now because the opposition will get their chance when the clause by clause reading comes in.

Sjt. Rohini Kumar Chaudhari : He will also get a chance then.

Mr. Speaker : If the hon. Member now interferes I am afraid I will have to take a very serious notice. There should be no interruption at all, no interference and no remarks. The hon. the Law Minister is entitled to proceed and give his own interpretation and his own reading of the facts as he thinks, are correct. We may not all agree with it *(Interruption).* Order order. No replies, no arguments now. I propose to allow no interruption. The hon. the Law Minister will go on.

The Honourable Dr. B. R. Ambedkar : Sir, as I was saying, to five parts of the Bill there is practically no opposition. With regard to the three parts relating to Marriage, Joint Family Property and Intestate Succession, so far as I have been able to follow the attitude taken by those who have opposed this measure, I find that their opposition is concentrated on certain points and not to the whole of those parts. With regard to Marriage I find the Opposition is concentrated on the subject matter of Divorce. With regard to Joint Family again, the opposition seems to be concentrated on the rule of survivorship. And with regard to Intestate Succession the opposition seems to be concentrated on the daughter's share. If I was therefore required to give a full reply to the debate and to the arguments advanced by those who have opposed the measure I would have concentrated myself upon these three matters, namely Divorce, the rule of survivorship and the brighter's share. I might say that I had thoroughly prepared myself to defend the provisions contained in these three parts of the Bill. But in view of the statement made by hon. the Prime Minister, I think it is unnecessary to enter into any controversy now. I welcome the suggestion made by hon. the Prime Minister and I undertake to give the fullest trial to the suggestion that he has made. Consequently I do not propose to give a detailed reply on these matters at this stage. As you, Sir, have suggested I too would like to reserve my reply to a later stage.

There is only one point which I think it is necessary for me to dwell upon in order that the House may realise the position in which the country finds itself. It will be noticed that the integration of India into one State and one Republic has brought within its territory a variety of Codes dealing with Hindu Law. There is the State of Baroda which has a Hindu Code which is different from the Hindu law as it is in operation in the provinces of India. That State has now become part and parcel of the Bombay Province. Similarly, Travancore and

Cochin which were outside the territorial limits and the sovereignty of India as we knew under the Government of India Act, 1935, have become part and parcel of one India. Mysore which has also a Hindu Code of its own in the matter of women's right to property, considerably different from the law prevalent in the Provinces of British India, has also become part and parcel of one India. Therefore, on the 26th of January, 1950, when the Republic will be inaugurated, we will be faced with a variety of systems of Hindu Law which we must do our best to co-ordinate. How would it be possible, for instance, for the Bombay Province to administer two systems of Hindu Law, one operative within that territory which is called Baroda and the other in the rest of the Province, when both territories have become integrated and part of one Province and one State? The same will be the case with the other territories. Supposing for instance, some of the parts of India which are under the sovereignty of the Portuguese or the French and which we hope to be able to recover under our dominion, also have different systems of Hindu Law, when they come in the same question will arise before us. What is to happen to the Law which the Hindus in Goa will be bringing with them? Are we going to allow them to retain the law which they will bring? Are we going to impose a Law which is in existence at present on them? Or are we going to evolve a system of Law which would be acceptable to both? The integration of India, therefore, has in a very pointed manner brought before us the problem of the codification and the modification of Hindu Law and what I want to suggest to the House is that this is a problem which could not be postponed nor could it be avoided if we want to bring about harmony among the variety of people who would be coming and becoming the citizens of the Indian Dominion.

Dr. B. Pattabhi Sitaramayya : Codification has been accepted.

The Honourable Dr. B. R. Ambedkar : Then, Sir, I would like to draw the attention of the House to one other point which appears to me a very important one. The House, at any rate those who indulge in opposing the Bill, seem to have completely forgotten the provisions contained in the Indian Constitution. Article 15 of the Indian Constitution which we have passed says in definite and clear terms under Fundamental Rights :

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Any one who has studied Hindu Law carefully will have to admit that apart from the many defects which the Hindu Law has, there are principles in the Hindu Law which discriminate between the *Savarna* castes and the *Shudras.* They also discriminate between a male Hindu and a female Hindu.

Shri Mahavir Tyagi : And a Hindu and a Muslim also !

The Honourable Dr. B. R. Ambedkar : It is therefore quite clear that parts of Hindu Law will be in conflict with the provisions of the Constitution. But that is only an understatement. There is a further point to be considered; it is not that this limitation imposed by article 15 is going to apply to future laws that the Parliament or the State Legislatures may make. The Constitution has gone stage beyond and in article 13, which I should like to read to the House, it is provided that:

> "All laws in force immediately before the commencement of this Constitution in the territory of India in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void."

Therefore, looking at the matter as a lawyer, I have not the least doubt about it that unless Hindu Law is not only codified but also modified so as to bring it in consonance with the provisions of article 15, parts of the Hindu Law will be declared to be void by the judiciary in view of article 13. Does the House desire that the Hindu Law should be exposed to judicial scrutiny in terms of article 13 of the Constitution and to have parts of Hindu Law declared, bit by bit, as and when matters are taken before the Court, as void, or would the House like to take the matter in its own hands and reform the Hindu Law so as to make it consistent with article 15 and not to expose it to the danger of having been declared void under article 13? If the House does not wish that the Hindu Law be broken bit by bit by the judiciary but that it becomes an integrated system consistent with our Constitution, then my submission is that it will be very wrong for this House to postpone the consideration of this matter.

Sir, these, in my judgment are very important considerations, and in view of that the House could not afford to postpone or delay the consideration of this matter. I hope the House will therefore accept my motion and carry through the consideration stage of this Bill.

Dr. B. Pattabhi Sitaramayya : Sir, may I ask for a clarification? Dr. Ambedkar has stated that all those provisions which are inconsistent with the particular article of the Constitution which he has quoted

will become void. Is it his contention that on the 26th January when the new Constitution comes into force, and the article which he has quoted certainly come into force, on that day all this portion of the Hindu Law become void and there will be a vacuum left? Can a more unreasonable presumption be made ?

Mr. Speaker : Order, order. That is expressing hon. Member's own opinion.

The Honourable Dr. B. R. Ambedkar : Sir, I have exercised, if I may say so, a great deal of self-control with regard to my friend Dr. Pattabhi Sitaramayya. He would have heard me say, if I had said all that I wanted to say about it.

Mr. Speaker : There are two amendments to the original proposition : That the Bill to amend and codify certain branches of the Hindu Law as reported by the Select Committee, be taken into consideration. I shall first put to the House the amendments. The first amendment is by Mr. Naziruddin Ahmad asking for circulation for obtaining further opinion thereon by the end of 1949. It is too late to extend the date.

Mr. Naziruddin Ahmad : May I explain the position, Sir ?

Mr. Speaker : No. The question is:

"That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949."

The motion was negatived.

Mr. Speaker : Then the next amendment. The question is :

"That the Bill be re-committed to the same Select Committee, to which it was sent, for a further report thereon with reference to the original Bill which was referred to it on the 9th April 1948."

The motion was negatived.

Mr. Naziruddin Ahmad : I claim a division, Sir.

Mr. Speaker : Very well. I find the 'Ayes' are five and the rest are 'Noes'. The motion is lost by a large majority. Now I will put the original motion.

The question is :

"That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Prof. Shibban Lal Saksena (U. P. : General): Sir, the 'Noes' have it.

Mr. Speaker : I find their number is only six or seven. The majority of Members are for the motion.

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* HINDU MARRIAGES VALIDITY (AMENDMENT) BILL

(AMENDMENT OF SECTION 2)

Shri Himatsingka (West Bengal) : I beg to move for leave to introduce a Bill further to amend the Hindu Marriages Validity Act, 1949 *(amendment of section 2).*

Mr. Speaker : The question is :

"The leave be granted to introduce a Bill further to amend the Hindu Marriages Validity Act, 1949 *(Amendment of section* 2)."

The motion was adopted.

Shri Himatsingka : I introduce the Bill.

**HINDU CODE

Mr. Speaker : That brings us to the next item on the agenda, the motion of Dr. Ambedkar: Further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee.

Now, with reference to this there are a number of amendments. I will just call upon Members one by one.

Shri Tyagi (Uttar Pradesh): The House has been taken quite unaware on this matter. I feel that some time should be given to the Members.

Mr. Speaker : Order, order. One at a time. Has the Hon. Law Minister anything to say ?

The Minister of Law (Dr. Ambedkar) : It might be taken.

Mr. Speaker : There was some suggestion that Members are being taken by surprise.

Dr. Ambedkar : It cannot be said because the Bill has been on the agenda for the last fortnight.

Shri J. R. Kapoor (Uttar Pradesh): But those who are most interested in taking up the Bill may have a grievance. Mrs. Renuka Ray is not here and many others who are particularly anxious to take it up.

Mr. Speaker : What I was thinking about was, whatever the fate of the various amendments or adjournment motions, the Members who have tabled them are not in their seats. I was just considering as to

*C.A. (Leg) D., Vol. VII, Part II, 12th December 1950, p. 1551.

**C.A. (Leg) D., (IV) Vol. VII, Part II, 14th December 1950, pp. 1780-93.

whether it will be proper or fair on our part just to call them out when this business is being taken up in an unexpected manner. That is the only point which really worries me. I find that Mr. Rohini Kumar Chaudhari is present. I also notice that Mr. Naziruddin Ahmad is here.

Shri R. K. Chaudhari (Assam): I would ask you to give us half an hour so that other Members may also be present.

Mr. Speaker : Let us proceed. I will call upon Mr. Naziruddin Ahmad.

Pandit Kunzru (Uttar Pradesh): May I suggest that the discussion should begin with a statement from the Hon. the Law Minister who held a conference with various interests. He has circulated a short report of the discussions that took place in the conference, but I think all sides of the House will be glad to hear a fuller account of the conference from him and the resume of the amendments that he has proposed. I think that would be a more proper course and this in a sense will give Members some time.

Dr. Ambedkar : I do not know that I have anything more to add. I took particular care to submit a statement to you with a view to its being circulated to Members at the very commencement of this session, so that Members may have a full account of what happened. I am rather sorry that we were not able to take a verbatim record of the proceedings of the Conference on account of the fact that several Members spoke in several different languages. Some spoke in Hindi, some spoke in English, some spoke in Marathi, some spoke in Gujarati and some spoke even in Sanskrit. It was quite impossible to take down a verbatim record, and I think, some also spoke in Tamil language. It was, therefore, quite impossible to have any person as a stenographer to take down the verbatim record. Otherwise, I should have been very glad to do so. Consequently, I myself, according to my memory summarised the points that were put before the Conference for discussion, the points which I found had emerged in the course of the discussion that had taken place in this House, from different stands of the House. They were placed before them and they were invited to address the Conference and I subsequently found out what was the largest measure of agreement among the speakers who took part and in accordance with that, I have suggested certain amendments to the original Bill.

You will also recall, Sir that in order to help the House. I have prepared two different texts of the Hindu Code, one in a serial order

giving the original section and also the new amendments that I propose to incorporate, so that they may have a complete view. I have also prepared a second text book, so to say, which contains the original text of the Select Committee's sections on the right-hand side and the new Code with the amendments on the left-hand side, so that whenever any amendment is moved not only the members will be able to find how the old clause reads but what the new clause also says. I think, I have done my level best to help the House to a proper understanding of the provisions of the Hindu Code as modified by the results of the informal committee. If any Hon. Member has any question to ask, I shall certainly be very glad to add or supplement whatever information I have given in that statement.

Shri Jnani Ram (Bihar): The Hon. Law Minister has stated that this Bill will be discussed for a day or two and that it will be postponed.

Mr. Speaker : We are not concerned with what happened at the party meeting.

Shri R. K. Chaudhari : The Hon. Minister may be pleased to make a statement in connection with what was stated in the party meeting itself.

Mr. Speaker : Order, order. The Party proceedings are not open here.

Shri Sivan Pillay (Travancore-Cochin): May I know if the clause by clause discussion is to take place now and that the general discussion on the principles of the Bill over?

Mr. Speaker : The Hon. Member has perhaps lost sight of the progress of the Bill. The consideration motion was adopted and now what remains to be done is to take the Bill clause by clause. I would put clause 2 to the House, but before that, there are certain amendments or certain motions urging the adjournment of the debate. These being adjournment motions must have precedence and, therefore, I am calling upon Mr. Naziruddin Ahmad, if he wishes, of course, to move his motion.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru) : One of the hon. Members put a certain question to me and I think it is fair to the house that I shall answer it, although you, Sir, were good enough to consider it as being not necessary. This Bill is obviously one which will normally take a long time of this House, if we go through it clause by clause. It is a contentious matter in which opinions differ. Nevertheless Government attach great importance to it and we do wish it to be taken up now, but we realize

that it is in the nature of things, not possible to go through it during this session even if we take it from day to day. Therefore, Government propose, subject to your approval, Sir, that we might deal with the initial stage there are certain objections and if all those objections can be disposed of this way or that—so that the way may be clear and not otherwise take up the time of the House during the session.

Mr. Speaker : Do I understand the position correctly that the amendments or motions by way of postponement should be disposed of first and that clause by clause consideration may be taken up later ?

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha) : Yes. That is so.

Mr. Speaker : In light of this, is it necessary to move any adjournment ?

Shri Naziruddin Ahmad (West Bengal): No.

Mr. Speaker : He may formally move without any speech, so that we may proceed with the other business.

Shri Naziruddin Ahmad : I beg to move:

> "That the debate on the Hindu Code Bill be adjourned to a special session of Parliament to be called for the purpose to enable Members to fully consider the Bill and the numerous Government amendments to the same."

I do not wish to move the other alternatives.

Mr. Speaker : Is he particular for a special session ?

Shri Naziruddin Ahmad : I want to place certain views and leave the matter entirely to Government. It is not by way of opposition or obstruction.

Mr. Speaker : The point is what should be the form of the motion. He wants postponement to the next session. That is the long and short of it.

Shri Naziruddin Ahmad : In that case, I shall, with your permission, move the alternatives also. I beg to move :

> "That the debate on the Hindu Code Bill be adjourned till a date during the next Budget session."

and

> "That the debate on the Hindu Code Bill be adjourned to a date after the Budget session is over."

I am entirely in the hands of Government as to what form the motion should take. The Hon. Prime Minister has clarified the situation that

we consider certain objections and later on at a suitable time we take up the clause by clause consideration. That entirely satisfies my point of view. It would be for the Government to consider and fix a suitable date or time.

We no doubt technically accepted the principles of the Bill, but subject to a certain understanding. Though not incorporated in the proceedings, the Hon. Law Minister gave an undertaking that he will seek representative public opinion conversant with the Hindu Law, and suggest amendments to the Bill. As I have already submitted, though the first reading was passed, it was substantially subject to Government being able to find suitable amending formulae to be placed before the House, and which would be acceptable to both sides. I find, however, that a large number of amendments of a very important character have been tabled by the Hon. the Law Minister. I also find that a very large number of amendments have been tabled by the members. There are 17 lists already before us and from the newspaper reports, I find that Government have decided to hold another final session for clause by clause consideration. There is every reason to suppose that if it were not so, many more amendments would have come and that is a matter for serious consideration.

My point is this. These are very important matters. In clause by clause consideration, we must not lose sight of the fact that the House is very seriously divided in matters of detail. In these circumstances, it would be better, I submit, for Government to give the House sufficient time to consider, the amendments, and find out the points of agreement. The Hon. Law Minister said that he consulted a number of people ; but he did not, so far as I am aware, consult the different sections of the House which were opposed to the principles of the Bill. A number of Members opposed the first Reading who have not been consulted.

Shri Tyagi : All of them were not Hindus.

Shri Naziruddin Ahmad : At least there was one who was not a Hindu, that is myself. The point is this. All these matters could not properly be discussed and decided upon on the floor of the House. They go to the fundamentals of the Bill. Each clause is practically a new and important subject. Each clause calls for a detailed consideration. Therefore, my submission is that the Government should give us time and should be willing to sit at a Round Table Conference to straighten out all these differences so that a Bill more acceptable

to the House in general may be evolved. These things should not be allowed to be decided on the spur of the moment and on the floor of the House.

Great things have happened meanwhile. The Indian States have been integrated. Their opinions were never taken. I believe agricultural land is now within the purview of the Bill. This creates another new situation. Therefore, in the light of important amendments coming from Government, and in view of the extension of the area geographically as well as to subjects. I think enough time should be given so that full consideration may be given to the Bill by members. There should be good machinery to settle these differences so that some agreed or some largely agreed formulae may be evolved. On a controversial legislation like this, we should be given sufficient time. I submit that the point of view I submitted during the first reading stage was fully justifed in view of the fact that at that time, the Hindu community's attention was not sufficiently drawn to it. My objection has again been justified by the fact that Government, itself has come forward with a large number of substantial amendments. My task is done. I supposed at that time that I was doing a public duty in drawing attention to certain defects which would have otherwise escaped attention. What kind of law would suit this House and the Hindu community is really primarily a matter for the Hindus. I am not primarily interested in the exact form and shape in which the Hindu Code is to be passed. My position is merely to indicate certain practical considerations and suggest amendments. From these points of view, I think Government should consider the matter and let us know what they want to do, and I am ready to offer constructive help to the passage of the Bill. The exact shape which the disputed clauses will take is not a matter of much personal interest to me, though not a matter in which I have no concern at all. I submit that these are matters which would induce Government to give us sufficient time and devise a machinery to solve the differences of opinion and adopt a code which would be more or less acceptable generally to the House. That is all I have to submit.

Shri Sidhva (Madhya Pradesh) : On a point of information, Sir. The hon. Member had two amendments, one for adjournment *sine die* and ....

Mr. Speaker : I am not permitting that.

I was just considering as to what would be the best form of the motion. One is for a special session, and the other is still a date during

the Budget Session ; the third is, sometime after the Budget Session is over. Shall we postpone till the next session ?

Shri Naziruddin Ahmad : I am entirely in the hands of Government.

Mr. Speaker : "The usual amendment is of course till the next Session. Shall I say : "That the debate on the Hindu Code Bill be adjourned to a date during or after the next Budget Session ?"

3 P.M.

Dr. Ambedkar : So far as the objective is concerned, there is, of course, no dispute between Members of Government and others who are in perfect harmony with Government's view on this subject, namely, that more time may be given to Members to study the Bill and to give their considered opinions. As the Prime Minister just now said, it is not the intention of Government to proceed *seriatim* with the consideration of the Bill, clause by clause. Therefore, my submission is this, that it should be left to Government to take up the Hindu Code Bill next session whenever they want to take it. They may have a special session, they may have a larger Budget session, so that part of it may be devoted to the Hindu Code Bill and part to the usual Budget discussion or it may call for some other session after the Budget Session. I do not want Government's hands to be tied down by any particular motion. As I said, I do not propose to carry through this Bill during this session. It is quite impossible. And it might probably be quite unfair. All the same, I want to oppose the motion, because I do not want to postpone the consideration of the Bill as a result of the motion moved by Mr. Naziruddin Ahmad. Government have given an assurance and Government will abide by it.

Shri Naziruddin Ahmad : I do not know why I should become the target of these oblique remarks.

Mr. Speaker : Therefore, I need not seriously consider the form of the motion.

Dr. Ambedkar : He may move all the motions and we shall negative them.

Shri Tyagi : Or we may move the previous question and this question may be postponed.

Mr. Speaker : I do not think that is necessary. Well, supposing I say that the matter is adjourned and we take the next business ?

Dr. Ambedkar : May I suggest that it would be very good, in my judgment, if you, after disposing of the motion by Mr. Naziruddin Ahmad ....

Shri Naziruddin Ahmad : Dispose of me!

Dr. Ambedkar : If after disposing of it, you merely say that clause 2 stand part of the Bill. And then I myself will move that the further consideration of the Bill be now postponed. I am prepared to put the Hindu Code Bill at the bottom of Government's agenda.

Shri R. K. Chaudhari : I had tabled an amendment, though I cannot say exactly what it is, because I have not got the papers with me now. I was not prepared for this subject. But if I remember a right, my motion was that we may have a special session for the purpose of dealing with the Hindu Code Bill. My grievance against bringing this sort of discussion in the midst of a very busy session is that we cannot get proper opportunity to study the subject. Therefore, I want to have this question considered in a special session.

Shri M. A. Ayyangar (Madras) : After all, Mr. Naziruddin Ahmad's motion only asks that sufficient time should be allowed to Members. And the Prime Minister has also agreed to this. Therefore, I would request Mr. Naziruddin Ahmad not to press his motion, and now, in view of the Prime Minister's statement, this may be adjourned to some day next session. And it is for Government to fix the date during the next session, or call for a special session immediately thereafter. Now that we agree that we should not take up the clause by clause consideration of the Bill, I think both sides are satisfied. Therefore, let the Prime Minister's statement be accepted and Mr. Naziruddin Ahmad need not press his amendment. Therefore, this may be adjourned to some day next session and it will mean that the Prime Minister or Government will fix the date that is suitable and convenient.

Dr. Ambedkar : May I again intervene ? I do not want a repetition of what has been taking place in this House. Every time this Bill comes in, some hon. Member takes it into his head to move a dilatory motion. Now this thing must stop. We have reached a stage when it is proper that the Bill should be taken up clause by clause, and therefore, in token of the fact that the House has consented to the consideration of the Bill, clause by clause, I would request you, that you should put clause 2 to the House ; and thereafter we may adjourn the discussion.

Shri Naziruddin Ahmad : I think the object of these oblique remarks is my humble self. I can give even a fuller undertaking that I will not bring in any dilatory motion.

Mr. Speaker : But there are not only the positions stated by the Law Minister and Mr. Naziruddin Ahmad, but there is also the difficulty of Mr. Chaudhari. Therefore, I think what I should do is this. I shall place the motions before the House and it can vote upon them.

Shri R. K. Chaudhari : But I have to explain my motion, Sir.

Mr. Speaker : The hon. Member has already explained it. I don't think any further time need be taken over this.

Shri M. A. Ayyangar : May I tell Mr. Chaudhari that as the object of his motion is that this question should be adjourned to a special session, we will assume that it is defeated. It is impossible to have a special session. Anyway, let us leave the entire matter in the hands of Government. They may tag it on to the Budget session to fix some convenient time. Why should he commit to have a special session ? If government finds it necessary to have one, they may have one. It does not serve any purpose committing them to have a special session.

Dr. Pattabhi (Madras) : The attitude of Government has more or less taken a change favourable to a more leisurely consideration of this subject. I do not want to dilate upon the subject at any great length. But I shall certainly object to the Hon. the Law Minister saying in a pedagogic manner that this kind of asking for adjournment will not be allowed. It must be allowed. It is the right of every member of this house to use all legitimate methods of opposition where there is an honest and sincere conviction on the side of opposition. I do not go the length of Balfour who said that it is the duty of the opposition to oppose the Government by all fair means if possible, and by all foul means, if necessary. But I will only say this much that if the Prime Minister in the abundance of his wisdom admitted that there are two schools of thought, and he has conceded the adjournment of the proposition very generously and very fairly, in view of that for the Hon. Law Minister to assume this professorial, pedagogic and pontifical attitude, is not desirable. It will only alienate attitudes that have almost been reconciled.

Shri Naziruddin Ahmad : And persons call up an opposition where there is none now!

Shri Jawaharlal Nehru : I want to make it perfectly clear that I stand by every word that the Hon. Law Minister has said. The position is this. Everyone feels that there should be fuller time for the consideration of this question, and therefore we decided to suggest to the House that the clause by clause consideration might take place

later. We should decide clearly the nature of the motion. If it is a dilatory motion and if the hon. Member wants the motion to be considered, let us consider it here and now. We are not going to postpone that motion. I do not want to prevent any motion. If we have a dilatory motion, it must be decided here and now.

Pandit Malaviya (Uttar Pradesh) : We know that there are very emphatic differences of opinion on this point; that acute differences of opinion exist between different sections of this House. Our Prime Minister has taken the practical view, and as we have the right to expect always, he has given us a lead in this matter and has said that this is a controversial issue on which a great deal of time has, in the very nature of things, to be given. May I appeal that since the matter is to be postponed, since no practical purpose is going to be served by our continuing this debate today on any motion or on any section; since there is a very keen and definite difference of opinion on this issue; and since the question of the enactment of the Hindu Code itself will not in any way be advanced by its being taken up now, may I respectfully submit that no section, no viewpoint, will lose anything if we leave the matter where it stands, as the item is going to be postponed. If the intention were to take the Bill into consideration and make any real progress, I would have nothing to say because, then, every Member would have the opportunity of expressing his views, and then whatever the house decided in its collective wisdom, would come on the Statute Book. But, since, according to the course suggested, no real progress is going to be made, I suggest that the very great opposition, the very great anxiety which prevails in the country should not be worsened, should not be deepened. I know that one view unfortunately is that it does not matter what the country thinks on this matter. But there is the other view that every side of the question should be carefully considered and respected. I do not wish to go into that matter in detail now. But I most earnestly appeal to Government not to do an unnecessary thing which will serve no useful purpose, but which will, on the other hand, create still greater resentment and dissatisfaction in the country. I submit that if we are going to postpone this matter and I fully approve the proposal—we should do so wholeheartedly instead of saying that we are postponing and yet we are not postponing, we are not taking it up now and yet we are taking it up, we are not going on with it and yet we are going on with it. Therefore, if the matter is to be

postponed it should be postponed immediately as it is till such future date as Government may fix for it.

Pandit M. B. Bhargava (Ajmer): I have not been able to follow the Hon. Law Minister's proposal. Does he want the Chair to rule for all time to come that in this House no adjournment motion shall be brought forward ? It is a constitutional issue that is sought to be raised and it is for the Chair to rule. As I understand it, it is an absolute right of every Member of the House to bring forward an adjournment motion at any time. Of course it will be for the Chair to admit it or not. If the Chair thinks that it is a dilatory motion it will not grant permission. Even if the Chair rules that such a motion is admissible, then it will be for the House to discuss it and then accept it or reject it. But so far as the right of a Member is concerned, it is an absolute right and he can move an adjournment motion at any stage. If you put clause 2 to the House and say that any time during the progress of the Bill there can be no postponement whatsoever, it is a constitutional issue.

Shri Naziruddin Ahmad : That is subject to the speaker's consent.

Mr. Speaker : I do not think I will express any opinion just at present as to whether in future any motion for adjournment can or would be allowed. That will depend upon the circumstances existing at the time such a motion is brought before the House. The Hon. Law Minister's point seems to be that the House is—not constitutionally or legally but—morally committed to the position that no dilatory motions just with a view to obtain the postponement of the Bill should be brought forward . . . . . .

Dr. Ambedkar : That is all.

Mr. Speaker : That seems to be his only point. I do not think that he meant to fetter the constitutional rights of Members. I would, therefore suggest that instead of putting clause 2 to the House and then postponing the matter, let us adjourn straightaway without putting the motion on clause 2 of the Bill, with a declaration about our moral commitment that such a motion will not be brought forward just for the purpose of securing postponement and no other object.

Some Hon. Members : No, no.

Mr. Speaker : The point is very important one. While the Law Minister was making a statement to that effect, though I could see his point and the force of it, I myself am not expressing a final opinion. I am open to conviction. No one need think that it will be possible

to bar each and every Member of this House from bringing an adjournment motion, if one is inclined to do so. The Chair may refuse to put it on the ground that it is a dilatory motion but that will depend upon the circumstances then existing when such a motion is brought forward. From my point of view it really makes no difference whether clause 2 is put and then the matter is adjourned. Therefore, as I said ; I would make a declaration about this moral binding on the part of the members of this House not to have any dilatory motion so far as this Bill is concerned and then adjourn the matter. I would therefore not like to have that constitutional issue raised again nor keep it alive for a second time as to whether such a motion could or could not be brought forward. I will proceed to adjourn the business and Government. . . .

Dr. Ambedkar : Do these motions then stand out ?

Mr. Speaker : These motions will fall through.

Dr. Ambedkar : What is the fate of these motions ?

Mr. Speaker : The members do not press the motions. If they had pressed their motions, then I was bound to put them to the House.

Some Hon. Members : They have not said so.

Mr. Speaker : I have asked them.

Mr. R. K. Chaudhari : Because a moral question has been raised I would rather like to have my motion put to the House and the House will decide whether it is dilatory or not.

Mr. Speaker : Then the position is quite clear. I will straightaway put it to the House and then we may proceed further. I am putting Mr. R. K. Chaudhari's motion to the House now.

Shri R. K. Chaudhari : Sir, on a maturer and second consideration I, do not propose to press my motion.

Mr. Speaker : So, since the consideration of the matter is now mature, let us proceed to postpone this and Government may fix a date ....

Some Hon. Members : He should withdraw by leave of the House.

Mr. Speaker : Our rule is when no motion is moved no leave is necessary.

Shrimati Durgabai (Madras) : I want to know whether this adjournment motion is under consideration.

Mr. Speaker : The whole thing falls through. The adjournment motions that they have tabled fall through. Nothing remains now. They

have been asked and they do not press them. As regards the others that have tabled similar motions they were not present when they were called upon to move. That is the position. Now the debate is being adjourned. It is not possible to bind all people for all time. If the circumstances arise we shall then meet them.

Shri Tyagi : Only such persons who have moved . . . .

Mr. Speaker : Unfortunately the hon. Member does not seem to have followed the discussion. No motion has been placed before the House by me. Unless I place a motion before the House there is no occasion for putting it to the vote of the House or even to withdraw it.

Shri Tyagi : There is no moral obligation then ?

Mr. Speaker : The moral obligation is there.

Shri Tyagi : I would rather prefer to be immoral.

Shrimati Durgabai : These motions were moved but not pressed.

Mr. Speaker : These motions are not moved at all. I have not placed them before the House.

Shrimati Durgabai : The hon. Member moved and then did not press his motion.

Mr. Speaker : What difference does it make ? If he moves the motion and it is voted against, does it mean that no such motion can ever be brought again ?

Shri Tyagi : Today only we are morally bound.

Mr. Speaker : It is a moral binding for all time. Let there be no further discussion. We shall proceed to the next item of business.

Shrimati Renuka Ray (West Bengal) : *rose*—

Mr. Speaker : The matter is closed and there can be no further discussion.

DR. BABASAHEB AMBEDKAR
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