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Eminent Parliamentarians Monograph Series

LOK SABHA SECRETARIAT
NEW DELHI
1997

EMINENT PARLIAMENTARIANS
MONOGRAPH SERIES

PANDIT MUKUT BEHARI LAL BHARGAVA

LOK SABHA SECRETARIAT
NEW DELHI
1997

1295/LS/F—1-A

LSS (PRIS-ESS)/EPM/16

August, 1997

Price: Rs. 60/-

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Eighth Edition) and printed by the Manager, Photo-Litho Unit, Government of India Press, Minto Road, New Delhi.

1295/LS/F—1-B

Foreword

The Indian Parliamentary Group (IPG), as part of its activities, organizes functions to commemorate the birth centenaries and anniversaries of distinguished leaders who have made their mark as parliamentarians and have left a distinct imprint on India's parliamentary system and its polity. The IPG also endeavours to highlight the contributions made by these leaders in the national cause. In this context, in 1990, a new Monograph Series was started to place on record the yeoman services rendered by eminent parliamentarians towards the strengthening of our parliamentary system. Already, fifteen such Monographs have been brought out in the "Eminent Parliamentarians Monograph Series".

The present Monograph recalls the outstanding contributions made by the veteran freedom fighter, eminent parliamentarian and distinguished jurist, Pt. Mukut Behari Lal Bhargava. Part One of the volume contains a profile of this noble son of India, focussing on his eventful life and achievements. Part Two carries some articles from his contemporaries, close associates and Members of Parliament. Part Three incorporates selected speeches of Pt. Mukut Behari Lal Bhargava delivered in the Constituent Assembly and the Lok Sabha. Part Four includes the glowing tributes paid by some of his admirers and colleagues in the Bar and public life.

I hope the Monograph would be found useful by all those who are interested in the contemporary history of our country.

NEW DELHI;
August, 1997

P.A. SANGMA,
Speaker, Lok Sabha
and
President
Indian Parliamentary Group.

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Pt. Mukut Behari Lal Bhargava — A Profile

Pandit Mukut Behari Lal Bhargava was one of those outstanding leaders of our country who endeared himself to the people by his exceptional integrity and utmost commitment to the national cause. He took to public life with a passion and a zeal, dedicating himself to the uplift of the peasants and the poor and used politics and legal profession as an instrument for social service to save the down-trodden and the suffering masses from the age-old exploitation. During the period of colonial subjugation, the entire Rajasthan, except Ajmer, was divided into a number of small and large princely States. In those days, freedom of the Press was only a dream; access to newspapers, publicity material, educational institutions, etc. was also minimal. In such a situation, Pt. Mukut Behari Lal Bhargava's contribution as a motivating force towards bringing about awakening among the people of Rajasthan and making them conscious of all forms of slavery is historic and unforgettable.

Early Life and Education

Born on 30 January 1903, in the very small princely State of Shahpura (Bhilwara), Pt. Mukut Behari Lal Bhargava came to Beawar, a major trading centre of Ajmer district, in his early childhood as an adopted son of Shri Vinodilalji Bhargava. He completed his primary education at Shahpura and Matriculation from the Mission School at Beawar, graduation from the Muir Central College, Allahabad and M.A. in History and LL.B. from Allahabad University.

Pandit Bhargava started his legal practice from Beawar. Mahatma Gandhi, Deshbandhu Chittranjan Das and Pandit

Motilal Nehru were the inspiring living idols and motivating as also guiding deities for young Mukut Behari Lal. No wonder, therefore, that he was attracted to and drawn into the freedom struggle and nationalist politics at the youthful and vibrant age of 20. It did not take him long to plunge into the battle and be active in the forefront of the struggle in the Ajmer-Beawar Region. Ajmer, being under the British rule, proved to be an important central place for the ongoing freedom struggle in the princely States. Thus, Pt. Bhargava remained associated with the freedom struggle of the entire Rajasthan region. He courted arrest and imprisonment while participating in the 'Individual Satyagraha' and during the Quit India Movement. He used his undoubted legal talents to defend the political dissenters and detenus, and was ever willing and ready to appear and fight for political groups and individuals in one or the other law courts.

As a Parliamentarian

The activities of Pt. Mukut Behari Lal Bhargava were not confined to the legal profession alone. During his imprisonment, he was subjected to torture, which resulted in the deterioration of his eyesight. Shri Bhargava completely lost his eyesight by 1950. He was a man of determination and the loss of eyesight could not deter him from his chosen path of serving the nation. Shri Bhargava served as a member of the Central Legislative Assembly during the year 1945, as a member of the Constituent Assembly in the year 1946 and as Vice-Chairman of Chief Commissioner's Advisory Council, Ajmer from 1947 to 1950. He was also a member of the First, Second and Third Lok Sabhas. He represented the Parliament of India in the 41st Inter-parliamentary Conference at Berne in 1952. He also attended the World Moral Re-armament Assembly in Switzerland and the 'One World Government' Conference in London.

Not many leaders of our country have had the rare distinction of being a member of the Central Legislative Assembly, the Constituent Assembly, the Provisional Parliament and finally the Lok Sabha. The record shows that as a member of these legislative bodies, Pt. Bhargava was very vocal and assertive and argued his viewpoints cogently and coherently, taking it to

the logical conclusion and convincing even those who differed with him. Whenever he spoke on national and international issues in the House, he mesmerised fellow parliamentarians with his logic, sensitivity and knowledge. In his very first speech in the Lok Sabha, he opposed the unnecessary importance attached to English, contending that the use of Hindi as national language was imperative for strengthening the bonds of nationalism. A foreign language cannot bind people emotionally and culturally and, therefore, cannot foster national unity, he argued.

Pt. Bhargava opposed the Hindu Code Bill even at the cost of inviting the displeasure of Pandit Jawaharlal Nehru. He vigorously pleaded for social control over the financial institutions and key industries. His powerful advocacy of the cause of Part 'C' States was commendable. He forcefully demanded the political and economic development of Part 'C' States and emphasised the need for the merger of Part 'C' States such as Ajmer, Bhopal, Coorg and Tripura into the adjoining States. In short, he was an outstanding parliamentarian who always spoke with authority.

True Spokesman of Ajmer

So long as Ajmer had been a Centrally-administered area, Pt. Bhargava very often raised the problems of Ajmer in Parliament. After Shri R.K. Sidhwa, it was he who raised the maximum number of questions in the provisional Parliament and raised voice against the despotism of the Chief Commissioners of Centrally-administered areas and brought a proposal to constitute Consultative Councils for these areas. When the private members tendered their resignations from these Councils in protest against the bureaucratic attitude, he submitted a proposal in 1950 to constitute a democratically elected body for Ajmer and other regions.

Shri Bhargava evinced keen interest in local self-government, and was very active in the local Government at Beawar. He served that Municipality in the capacity of Vice-Chairman for several years. Mukut Beharilalji was an ardent believer in decentralization and democratisation at the local level. He

strove for a truly people-oriented and grass-roots level administration. Top-heavy rule in any form was deplored by him. He knew, understood and practised the technique and art of popular involvement at the lowest levels. Anything that was imposed from above or from outside would hardly survive and grow, he thought. With this in mind, he devoted himself fully and enthusiastically to the issues confronting the region.

As a Lawyer

Pt. Bhargava started his legal career at Beawar in July, 1926 and practised at the Bar for more than five decades. He was the embodiment of all the creative faculties that are demanded of a jurist, orator and philosopher. He was endowed with a remarkable memory and imagination and had something of a creative artist in him. Even though Shri Bhargava was visually handicapped, his mastery of facts and the provisions of various statutes was always so complete and flawless that it was impossible to believe that he was physically tormented. Shri Bhargava had acquired great talent through hard work and perseverance. Nothing came to him the easy way.

During his career, Pt. Bhargava boldly extended free legal aid to 84 victims against whom police had filed a case alleging their involvement in the National Movement of 1930 and thus set an example for fellow lawyers. He pleaded for Shri Arjunlal Sethi, Shri Ghisulal Jajodiya, Md. Atarmohammad, Pt. Gopilal Sharma, Md. Jamaluddin Makhmoor and several others and also provided free legal aid to pursue lawsuits in other political cases thereby showing his love for the nation. During his long and successful legal career, he handled a large number of important cases involving constitutional and difficult and complicated questions of civil law. He was an acknowledged expert of election law and many election disputes were handled by him. He fought election cases of Congressmen free of charge irrespective of the strain they put on him. His preparation of the cases was so thorough that it left the adversary and the court marvelling at his legal acumen. It was difficult to believe that with his incapacity, he could store so much in his mind just on

the basis of his listening to reading by his juniors. His presentation of cases in facile English was unmatched and was held in high esteem both by the Bench and the Bar because of his thoroughness.

Pt. Bhargava had been an acknowledged leader of the Bar and was much in demand. He was a senior advocate of the High Court and the Supreme Court. Lawyers used to gather in large numbers in the court rooms to see him pleading the cases with his unfailing memory and extraordinary wit. On his completing 50 years at the Bar in 1976, a Golden Jubilee felicitation function was organised by the Rajasthan Bar Association at Jodhpur. Shri Harbhauji Upadhyay described him as the "C.R. Das" of Ajmer.

Pt. Bhargava also went to Uttar Pradesh, Himachal Pradesh and Punjab to plead election writ petitions of several leaders. He made tireless efforts for setting up a Bench of the Rajasthan High Court in Jaipur. He was also the Chairman of the Rajasthan Bar Council. Justice Ajit Nath Ray, a former Chief Justice of India, was so much impressed by his knowledge of law that he called him a "moving encyclopaedia of law". He was a votary of an independent Judiciary. As a Member of Parliament, he also strove hard for the separation of the Judiciary from the Executive.

His Public Life

Having made his debut in public life at the age of 24, he was, for the first time, elected as a member of the Beawar Nagar Palika and also as convener of its Sub-Committee on Education in 1927. He continued as a member of the Nagar Palika for many years. Subsequently, he voluntarily relinquished that office due to his increasing pre-occupations with parliamentary work. He made successful efforts to make provision for more non-official members and Chairmen in other municipal bodies of the district. He always criticised the Government's policy of keeping the local self-governing bodies under Administrators for long by withholding elections thereto.

In 1928, he joined the Congress Party and in 1936, he was elected a delegate for the Haripura Session of the Congress Party. He was the President of the Ajmer Rajputana Madhya Bharat Pradesh Congress from 1941 to 1945 and from 1947 to 1948. With his public service background in the Ajmer region, he was appointed the Vice-President in the Advisory Council of the Chief Commissioner of Ajmer in 1947. He was the President of the Ajmer Pradesh Congress from 1952 to 1957. From 1942 to 1960 and from 1964 to 1968, he was a member of the Congress Maha Samiti. He was also a member of the Rajasthan Pradesh Congress Management Committee and the Election Committee. After the split in the Congress Party, he stayed with the Sanghathan Congress.

Ardent Supporter of Minorities and Downtrodden

Pt. Mukut Behari Lal Bhargava used to tour his constituency several times in a year for political work. He contributed a lot in finding solutions to the problems of minority communities—Muslims, Sikhs and Christians. His efforts to provide safety to Muslims and rehabilitate the refugees following the partition of our country, was praiseworthy. He was the Chairman of the 'Mathura-Kishoriraman Siksha Samiti' for several years under which several colleges and schools are running. He also contributed substantially in the functions organised from time to time by the Sanatan Dharma Sabha, the Jain Samaj and the Arya Samaj. He was also prompt in resolving the labour disputes and from the very beginning involved himself in the uplift of the Scheduled Castes and the Scheduled Tribes. He always extended his support for protecting the genuine cause of government servants and businessmen.

Tributes and Homage

Pt. Mukut Behari Lal Bhargava left for his eternal abode on 18 December, 1980. National leaders and eminent personalities throughout the country expressed their grief on the death of this great son of India. Tributes were also paid by his friends, colleagues, acquaintances, Members of Parliament, social and educational organisations, Congress Committees and several other organisations. Condolences were expressed in the Indian

Parliament and in the Rajasthan and Haryana Legislative Assemblies and silence was observed in his memory. The Rajasthan Bar Council and several lawyer associations of the State also paid their homage to the departed soul.

PART TWO

Articles

2

Mukut Behari Lal Bhargava—A Dedicated Personality

*Dr. Shanker Dayal Sharma**

Shri Mukut Behari Lal Bhargava was a renowned jurist and an eminent freedom fighter. Even as a student, he set up a Students' Society to promote political awareness among the youth.

The first half of the 20th Century was marked by great patriotic fervour and the awakening of political consciousness amongst our people. The spirit of the times, which I have personally experienced, deeply stirred the heart and soul of Shri Bhargavaji. He was motivated to join active politics at the age of 25 and to participate in several important events of our Freedom Struggle including the 'Quit India Movement' of 1942. During this period, Shri Bhargavaji suffered imprisonment. In jail he was served poisonous food which seriously affected his eyesight.

One year prior to the Quit India Movement, Shri Bhargavaji was made a leader of the Beawar Congress Committee during the individual 'Satyagraha' Movement. Later in 1946, in view of his political stature in Rajasthan and his vast knowledge of law and experience as an advocate, he was nominated to the Constituent Assembly. In 1947, Shri Bhargavaji became a member of the Provisional Parliament and thereafter continued to be a Member of Parliament from the first elections held in 1952 upto 1967.

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* Former President of India.

In Parliament, Pt. Bhargava distinguished himself as a good orator and a true and fearless public servant. His razor-sharp memory and lucid exposition of his views made him an outstanding Parliamentarian of his time. I have read some of his speeches which testify to the painstaking efforts made by an honest, patriotic and sensitive lawyer.

Mahatma Gandhi deeply influenced Bhargavaji. Under Bapu's inspiration, he established the 'Harijan Sevak Sangh' in 1933 in Beawar and was elected its first President. Later in 1953, he was elected President of 'Ajmer Rajya Harijan Sevak Sangh'. He was a staunch proponent of Khadi. He also believed that the medium of instruction in our education system should be the mother tongue. As a member of the municipality, he made notable contributions to local area development. He was a strong believer in Gandhiji's philosophy of the development of village industry and upliftment of women. He espoused the cause of widows. He was the President of Mahila Shiksha Sadan. Like Gandhiji, he never viewed law merely as a profession; rather, he used it as an instrument of public service. During the freedom struggle he extended free legal aid to many freedom fighters and always stood ready to assist those in need.

Shri Bhargava was a fighter for just causes. Though, he had a failing eyesight at the young age of 39, it did not deter him in his work in service of the people.

I hope that his passion for public service, his zeal for hard work and his total dedication to the cause of national reconstruction will always inspire our countrymen.

3

A Versatile Man

*Bali Ram Bhagat**

Pandit Mukut Behari Lal Bhargava was a multi-faceted personality—a freedom fighter, a nationalist, a legal luminary, a parliamentarian, a political leader, a social reformer, a crusader for the cause of the down-trodden, a visionary and above all a gentlemen with tremendous human warmth. Indeed this is a rare combination of sterling qualities of head and heart coupled with a burning desire to work for the betterment of humanity.

Born on 30 January 1903 in Shahpura, a tiny princely state in the erstwhile Rajputana (now known as the State of Rajasthan), he settled down in Beawar, an industrial town near Ajmer which became the nerve-centre of the activities of revolutionaries, such as Vijai Singh Pathik, Rao Gopal Singh of Kharva, Seth Damodar Das Rathi, Kesari Singh Barhet, Arjun Lal Sethi, Swami Kumarnand and many other distinguished personalities incessantly working for the liberation from the shackles of feudal and colonial bondage. He joined the Indian National Congress in 1928 and rose to become the President of the Ajmer Rajputana Madhya Bharat Pradesh Congress and also Ajmer Pradesh Congress Committee. Other coveted positions which he held included the membership of the Central Legislative Assembly, the Constituent Assembly and the Provisional Parliament. Thus, he was one of the founding fathers of the Indian Constitution. His popularity with the masses was reflected in his election as a member of the Lok Sabha for

*Governor of Rajasthan.

fifteen long years from 1952 to 1967. He left an indelible mark on the public life streching from the grassroot to the national level. He was a dedicated freedom fighter. His spearheading of the Quit India Movement in Ajmer led him to the British Jail where he was kept under the custody of Anglo-Indian soldiers, notoriously known for their abnormal, monstrous and outrageous behaviour. His incarceration in Ajmer Jail proved disastrous for him as he lost his eyesight completely due to foul play at the hands of the colonial masters who were bent upon to crush the freedom struggle. But, even the loss of sight could not deter him from his goal and he continued to struggle for the freedom of our country.

He undertook trips to many countries, where he left an impact of his impressive personality. He was selected as a member of the Indian Parliamentary Group delegation to the 41st Inter-Parliamentary Union Conference held at Berne in 1952. He was also invited to participate in the world Moral Rearmament Assembly at Caux (Switzerland) and the One World Government Conference held in London. He was elected as one of the members of the Committee to draft the Constitution of World Association of Parliamentarians for World Government. He also visited a number of other European countries.

An Outstanding Lawyer

Pandit Bhargava had a phenomenal memory which proved to be the storehouse of accurate information. Despite his visual disability he could wade through the complicated case laws with effortless ease. It was a real treat to hear him presenting propositions of law fully documented by punctilious references. He could quote pages after pages from the record of a case and from books of law verbatim from his memory. Even the tallest among the eminent lawyers conceded that he was a formidable adversary and to be pitted against him was stimulating and challenging. His marshalling of arguments with relentless logic, building up of a case in a coherent and systematic way, his articulation, mastery over language and facts were simply amazing. He often won laurels in the legal cases, he contested and made substantial contribution to the growth and

development of law. His office was like a legal clinic where his diligence, precision and marshalling of minutest details went into the preparation of his brief. He superbly argued extremely complicated cases without forgetting any material facts or losing the thread of his narration. People at the Bar often wondered if nature had endowed him with an invisible camera and a tape recorder. Most of his colleagues and juniors called him a 'living encyclopaedia' while others thought him to be a dictionary of facts and law. The consensus among the lawyers, however, centred around the fact that Mukut Behari Lal Bhargava was indeed a jewel in the crown of Rajasthan Bar.

An Able Parliamentarian

He was an outstanding parliamentarian too. Very few in the country have had the rare distinction of being associated as member of the Central Legislative Assembly, Constituent Assembly, the Provisional Parliament and finally the Lok Sabha for three consecutive terms. The record shows that as a member of these legislative bodies he was very vocal and assertive and argued his view point cogently and coherently taking it to the logical conclusion and convincing even those who differed with him.

He was a nationalist to the core and his love for Hindi was well known. In his first speech in the Lok Sabha, he opposed Rule 59 of the Rules of Procedure and Conduct of Business which attached unnecessary importance to a foreign language. Bhargava's contention was that the use of Hindi as national language was imperative for strengthening bonds of nationalism. Foreign language cannot bind people emotionally and culturally and, therefore, cannot foster national unity. He opposed the Hindu Code Bill even at the cost of the displeasure of the then Prime Minister Pandit Jawaharlal Nehru who had made it a prestige issue to see it through. While quoting profusely from the Hindu scriptures, Bhargava built up his strong case against the Bill. Shrimati Durga Bai Deshmukh had advised him not to displease Pandit Nehru on this point to such an extent, but he remained undertered since his opposition to the Bill was born out of his own conviction.

He was a convinced democrat and a socialist too. He vigorously pleaded for social control over the financial institutions and key industries. Without mincing words he argued that the financial structure of the Government should be strengthened by the nationalisation of banking and insurance business and enforcing compulsory savings. He also emphasised on the nationalisation of key industries. He had a vision and perspective which got abundantly reflected in his understanding of the global scenario. In fact, what he said forty-four years ago is still relevant even today. The following extract from his speech delivered at Berne in 1952 as representative of India bears testimony to this fact:

> "The truth is that some countries of the world are at present at the Zenith of the industrial and economic glory and people there enjoy the very high standard of living, while 2/3rd of mankind is much backward economically. The only test of sincerity for world peace is how far the industrially and economically advanced countries in the west are inclined to pool off their resources to raise the standard of living of these unfortunate people of the developing countries who are sunk in poverty, disease and squalor and as such financial assistance must be offered without any strings attached therewith; otherwise all talk of peace is just in the air."

His powerful advocacy of the cause of Part 'C' States was really commendable. He forcefully pleaded for the political and economic development of Part 'C' States. He regretted that whereas elections based on adult franchise are to be conducted in the rest of India, Part 'C' States have been kept isolated from it. Nothing substantial has happened in the wake of the inauguration of democratic institutions in these States, he lamented. He pleaded for the merger of Part 'C' States such as Ajmer, Bhopal, Coorg and Tripura into the adjoining States. He specially argued the case of Ajmer for merger into Rajasthan since historically, culturally and linguistically it was its integral part.

A Crusader for Public Cause

Being born and brought up in a feudal society, which did not witness intensive political and social movement challenging the old order, he had seen barbaric acts and atrocities perpetrated by the contemporary rulers on the ill-fed, ill-clothed, ignorant and poor subjects languishing for centuries. An Indian Princely State was generally perceived to be a society where there had been no rule of law. Even Mahatma Gandhi felt that "every Indian Prince is a Hitler in his own State. He can shoot his people without coming under any law. Hitler enjoys no greater powers" (Harijan, 3 October 1939). One word of the ruler, in brief, was law to the subjects and his control over legislation and the administration of justice was absolute. Representative institutions with which the people could be associated did not exist in the Rajputana States. These institutions, if at all they existed in some States like Jaipur, Jodhpur, Udaipur and Bikaner did not enjoy even the powers of legislation and taxation. Even with the ex-parte evidence advanced by the princes to the Butler Committee, the latter was forced to remark that the "so-called reforms were no doubt, inchoate or on paper only."

The Young Bhargava took a solemn pledge to plunge into the topsy turvy arena of Politics which he joined to serve a cause which was to usher in an era of social justice. He fearlessly launched heroic campaign against the *Jagirdari, Munafadari* and *Biswedari* in the centrally administered Ajmer-Mewara region in particular and in the princely States of erstwhile Rajputana in general.

It was, indeed, a momentous and, in a way, historic landmark in the sphere of agrarian reforms in Rajasthan. He sided with the tongue-tied ignorant and poverty-striken peasantry and saw that the mute people got legal voice. The struggle went on unabated and ultimately the peasantry who were more or less tenants-at-will and landless labourers, got *Khatedari* rights under the dynamic leadership of Pandit Mukut Behari Lal Bhargava. The Ajmer Tenancy and Land Records Act, 1950

passed by the Parliament was the outcome of the untiring efforts made by Shri Bhargava. His efforts were further crowned with great success under the *Istmurardari* system when the land tax was reduced from 1/3rd to 1/8th. He vigorously fought against the practice of forced labour prevalent particularly under the *Jagirdari* system. In fact, he made untiring efforts to see that administration in the feudal order was humanised and democratised.

In sum, Pandit Bhargava had irrepressible sense of justice, fairplay and liberty which he exemplified. As a Member of Parliament, as a public worker, as a lawyer and also in his personal life, he brought to bear upon his work the moral values of the Gandhian era and total commitment to constitutionalism and rule of law.

4

An Ardent Patriot: Pt. Bhargava*

—Nathuram Mirdha

A freedom fighter, a conscious parliamentarian and an ardent patriot, late Pt. Mukut Behari Lal Bhargava was, indeed, a gem of Mother India whose conduct will always encourage the future generations to follow the illuminated path of selfless service and patriotism.

The slavery and pathetic condition of the country caught Shri Bhargava's attention when he was about to enter the struggle of life after getting his Master's degree in History and a degree in Law from Prayag University. As Reception Committee Chairman of the political session of the All India Princely States Public Council organised at Beawar, he proved it true that "Nation is above an individual."

Henceforth, flame of patriotism kindled in his heart became so bright that the patriots followed him for achieving the national goal. The first Rajputana Kisan Mazdoor Sammelan held in 1931 was presided over by him in which the speech delivered by late Arjunlal Sethi was treated as an act of high treason by the court which issued warrants against Shri Sethi to present himself before it. On this occasion, the acumen and genious of Pt. Bhargava came to the fore. Hearing his reasoned arguments, the court had to pass order for the release of Shri Sethi.

In 1937, Pt. Bhargava organised Rajputana Madhya Bharat Vidyarthi Conference. During individual Satyagraha in 1941,

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Late Shri Nathuram Mirdha was a Member of Parliament.
*(Translated version of the article in Hindi.)

Pt. Jawahar Lal Nehru appointed him the first dictator of Beawar Congress Committee. In this capacity, he unfurled the tricolour at the Municipal Office and enthused the people with the spirit of freedom in such a way that even the foreign rulers were astonished. For this, he was bound to be jailed. Meanwhile, he was elected the President of the Rajputana, Ajmer, Merwad and the Central India Congress Committee. Under his Presidentship, the "Quit India" movement gained momentum. Consequently, he was put behind the bars in 1942 and this time he lost his eye-sight for ever due to poisonous food provided by the foreign rulers. Unshaken by this mishap, he continued to move towards his goal with the same zeal and proved the saying that "a brave man knows no barriers and even death bows down before him."

He was elected a member of the Central Legislative Assembly in 1945. The same year he became a member of the Indian Constituent Assembly as well. He also remained a member of the Provisional Parliament from 1950 to 1952.

During the communal riots just after Independence, he played a pivotal role in maintaining communal amity and harmony. The sacred places (in Rajasthan) could be saved only through his tireless efforts. It is the result of his heroic endeavour that millions of devotees visit the holy Ajmer Shareif to offer their floral tributes even today.

Pt. Bhargava was an accomplished jurist. He was known as a "living encyclopaedia". Even after having lost his eyesight he had exceptional memory. Whenever he spoke in the High Court or Supreme Court, the bench and the bar were thrilled alike at his arguments supported by references.

In the year 1952, Pt. Mukut Behari Lal Bhargava was elected to the Lok Sabha from Ajmer with an overwhelming majority. During his three terms as a member of Lok Sabha, his contribution towards welfare of the poor and neglected sections of the society as also for promotion of Hindi will be written in history in the golden letters.

In 1972, this profound nationalist, a staunch protagonist of the parliamentary system and a foremost freedom fighter was honoured with a 'Tamra Patra' with citation by the then Prime Minister, Smt. Indira Gandhi.

Born on 30 January, 1903 Pt. Mukut Behari Lal Bhargava, son of Shri Chandu Lal Bhargava merged into infinity on 18 December, 1980. This beloved son of mother India who left behind his fragrance on earth, will continue to throb in every particle of the nation for ever.

5

Pandit Mukut Behari Lal Bhargava—
A Distinguished Son of India

*Vidyacharan Shukla**

Late Pandit Mukut Behari Lal Bhargava was an erudite lawyer and an eminent parliamentarian who deserves the pride of place in the roll of honours of the Indian Republic. I had the privilege of being in the Parliament alongwith Pt. Bhargava in the Second and Third Lok Sabhas. Thus, I had the opportunity of meeting him often and watching his distinguished performance as a parliamentarian. I remember that when he rose to speak in the Parliament, there was usually a hushed silence among the members.

Pt. Bhargava was born on 30 January 1903 in the erstwhile princely State of Ajmer. He passed away on 18 December 1980 at the age of 77. He joined the freedom struggle at a very young age and was arrested and sentenced to various terms of imprisonment on several occasions. Even though he lost his vision when he was only 39, he was not daunted by the disability. As a matter of fact, his public life reached its full plenitude after he suffered loss of vision. For example, even after he lost his vision, he was elected to the Central Legislative Assembly in 1945 and to the Constituent Assembly in 1946 and took keen interest in the drafting of our Constitution. Later in 1952, he represented India in the forty-first Inter-Parliamentary Conference at Berne in Switzerland.

*Former Union Minister of Water Resources and Parliamentary Affairs.

Late C.K. Daphtary, one of the most brilliant lawyers that India has ever produced, paid Pt. Bhargava a tribute for his mastery of the law, his clear exposition of a case and his persuasive logic. As Pt. Bhargava lost his sight at an early age, he used to hear the facts of a case from his assistants and apply the law to the facts and make a great impression on the judges by his advocacy. I am told that during his arguments before the Bench, the judges never interrupted him to seek clarification on different aspects of a case because Pt. Bhargava was so clear in his presentation. It was said that "Pt. Bhargava used to build his case in a court of law with the finish of an architect and the skill of an engineer". He was such a success at the bar that he was popularly known as the C.R. Das of Rajasthan.

Pt. Bhargava was a staunch Congressman. Even though he earned a substantial income through legal practice, he lived a simple life. A tribute to his simplicity and passion for championing just causes, was paid by someone, who wrote that 'Pt. Bhargava lived in a cave but worked for slaves'.

Today, when we are facing a moral crisis with distortion of values, the ideas of Pt. Mukut Behari Lal Bhargava can be a source of inspiration to reaffirm our faith in the basic values of our culture and heritage. Let me pay a tribute to his memory by saying that India is a great nation and we Indians are capable of indentifying ourselves with just causes as Pt. Bhargava did in his lifetime. We are also, like Pt. Bhargava and many other distinguished leaders, capable of dedicated efforts for public causes.

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Shri Mukut Behari Lal Bhargava — A Messiah of the Poor

*Mohan Lall Shrimal**

A distinguished freedom fighter, a great orator, a great Parliamentarian, a selfless patriot, a veteran lawyer, a champion of social justice, a doctor to provide relief to the bleeding wounds caused by British atrocities and, above all, a great human being with a bleeding heart for the proverty-stricken masses was none else than Shri Mukut Behari Lal Bhargava, who was a versatile genuis. He had been a priceless and valuable ornament of the All India Bar Council. Pt. Bhargava was born on 30 January 1903 in Shahpura, a tiny princely State in the erstwhile Rajputana (now known as the State of Rajasthan). He was born to middle class pious parents devoted to the cause of the poor and Lord Krishna. After his brilliant academic career Pt. Bhargava joined the legal profession in the year 1926. Soon he rose to towering heights. Pt. Bhargava's phenomenal memory virtually made him a living encyclopaedia. In the words of late Shri Kumara Mangalam (a renowned jurist and laywer), 'Shri Bhargava was a dictionary in himself of both facts and law'. He argued the election appeal of late Mohan Lal Sukhadia before the Supreme Court when Hon'ble Justice Hidayatullah presided over the Bench. After hearing the arguments Hon'ble justice Hidayatullah said 'here is a living encyclopaedia'. I had the opportunity to appear with him as well as against him as Additional Advocate General of the State

*Chairman, Sikkim Backward Classes Commission and Chairman, Sikkim Pay Commission.

Pt. Bhargava used to marshal his arguments with relentless logic and with powerful driving force. He used to build his case with fineness of an architect and skill of an Engineer. He was always careful in choosing his bricks and mortar out of the legal and factual materials. Behind the impressive array of his arguments, there always used to be a well stocked armoury of the case law. He would invariably put his case with firm conviction making an impact on the court as well as on the adversary with jolt and shock. His advocacy, knowledge and forensic skill would always serve as a light-house for the younger generation. He invariably considered law as a sturdy and formidable instrument to bring social change. He had the largest number of free (without having made payment) cases at his credit. His office could be well described as 'a legal clinic' ever ready to heal the legal wounds of the suffering humanity.

Social and Political Achievements

Pt. Mukut Behari Lal's fame as a great and forceful lawyer travelled from huts to the palaces and money started pouring in. But the tearful woes and misery of the people drew him from the court walls to the service of mankind. He preferred the path of thorns rather than a bed of roses, a life of self-denial to the tinkling sound of the British Indian coin.

Illustrious freedom fighters of the time such as Manik Lal Verma of Mewar, Jainarayan Vyas of Marwar, Swami Kumarananda of Beawar, Harihar Gopal of Jaisalmer, Arjun Lal Sethi and Hiralal Shastri of Jaipur, Vijay Singh Pathik, Rao Gopal Singh of Karwa and Seth Damodardas Rath noticed in this firebrand young lawyer a bleeding heart for the poor and an ardent desire to wipe off every tear from every eye. The hugged and embraced him in to the fold of Congress as a valuable jewel. After joining the mainstream of politics he launched his historical and heroic campaign against the *Jagirdari, Muvafidari and Biswedari* systems in the princely States as well as in the centrally-administered Ajmer Marwar territory. It was a momentous and significant landmark in the history of agrarian reforms in Rajasthan. The young lawyer beleaguered and roared in the valley of the Arawali hills which echoed from

village to village throughout Rajasthan. The tongue-tied, inarticulate and mute poverty stricken peasantry got a legal voice and they rose to the occasion. Pt. Mukut Behari Lal Bhargava steered the landless labourers to become *Khatedar* tenants.

During this period, Pt. Mukut Behari Lal attended selective type of legal work mainly in favour of the political workers and the helpless poor people who were made to suffer atrocities at the hands of the henchmen of the British empire. Pt. Bhargava's house became a sanctuary or asylum for the exiled patriots and political workers of the princely States. They were not only defended or vindicated in courts of law but were treated with cherished affection and generous welcome as a member of the family by the hospitable and un-assuming Radharani, the beloved wife of Shri Bhargava who always bestowed the love of a mother and sister.

Ajmer being a centrally-administered area, the well known British politicians were in considerable majority there. They tried the policy of 'divide and rule' but the lion hearted lawyer refused to stir or budge an inch from the path of service. He heard the clarion call of the country and submitted himself to the discipline of the great Mahatma, the father of the nation. He zealously and strenuously worked for the freedom of our motherland. When the allurements and deceptive attempts to influence him failed, Pt. Bhargava was put behind bars by the Britishers in the year 1941. Just after his release he was again arrested in the 'Quit India Movement' launched in the year 1942 and was placed under the custody of Anglo-Indian soldiers who were notoriously known for their abnormal, monstrous and outrageous behaviour against the freedom fighters. The back-ache suffered by most of us in the cloudy season is in itself sufficient to remind us of the atrocities and shocking rudeness practised by the so called representatives of the British Empire.

Pt. Bhargava came out from jail like the purified glittering gold, coming out of furnace with greater glamour. The public in general acknowledged Pandit Bhargava's penetrating vision, masterly comprehension, indominatable will and boundless courage. Pt. Mukut Behari Lal Bhargava, unfortunately, lost his

eyes in jail. In spite of that, after his release, he achieved a landslide victory in the Central Legislative Assembly elections held in the year 1945. He became the predominant and prepondrant member of the Constitutent Assembly in the year 1946 and had the privilege of being one of our founding fathers. He adorned the provisional Parliament. His popularity with the masses is reflected in his election as a member of Lok Sabha for 15 long years from 1952 to 1967. He represented the national viewpoint in many countries and left an impact of his impressive personality. He was selected as a member of the Indian Parliamentary group delegation to the 41st Inter-Parliamentary Union Conference held at Berne in 1952. He was also invited to participate in the World Moral Rearmament Assembly at Caux (Switzerland) and the One World Government Conference held in London. He was elected as one of the members of the Committee to draft the Constitution of World Association of Parliamentarians for World Government.

Pt. Mukut Behari Lal Bhargava has left a lesson for us. Those who cannot serve the many (who are poor), can certainly not save the few who are rich. Where power of the pen fails, the bullet takes its place. We have chosen evolution and not revolution. The poor people are not begging for surplus. They are fighting for their rights. If we deny them their due share, I fear, the word 'evolution' would be replaced by the word 'revolution' which would be a bad day for all of us.

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Pandit Mukut Behari Lal Bhargava— A Star in the Legal Firmament

Justice B.P. Beri[*]

Pandit Mukut Behari Lal Bhargava was incarcerated in the Quit India Movement of 1942. On his release, I recognized his presence as a rising star in the legal firmament. I appeared with him as an associate in some cases and felt that he had a phenomenal memory. He remembered hundreds of names in a complicated pedigree table with rare accuracy. I appeared against him in some cases and noticed that his sight was failing when his notes consisted of a good many words in a very big size. It is sad to reflect that eventually he lost his sight altogether.

He was a great enthusiast for the protection of agriculturists and particularly those in the *Istimirari* areas. Ajmer-Merwara Tenency Act was probably the result of his hard work and I had the rare experience of appearing against him before the Select Committee on that Bill before Hon'ble Shri Jairam Das Daulat Ram representing the landed aristocracy. I must confess that my case was not strong; still with the objectivity of the Chairman and the Members of the Select Committee my clients succeeded to some extent. I recall with pleasure the ring of sincerety and the blast of enthusiasm of Pandit Mukut Behari Lal Bhargava, M.P. in that case.

I appeared against him in numerous cases. His preparation was thorough and that goaded most of us also to rise to equal

[*]Former Chief Justice of the Rajasthan High Court.

preparation. He left no point in his client's favour and did not omit to cite any authority either. The area of election petitions was his speciality. And, I opposed him probably in the largest number of cases. Enviable memory and thorough preparation punctuated his advocacy.

I had a singular experience when Pandit Mukut Behari Lal Bhargava was my client in his own election petition. Naturally, this was a case in which he was deeply concerned and obviously well prepared but he respected his Counsel's decisions as an ordinary client. It was a pleasure arguing for him.

He must have argued thousands of cases in his life, but probably the most voluminous and equally sensational case was the 'Jaipur Firing Enquiry' in which he was representing the Administration. I was the Chairman of that Commission, the Report of which has been recommended for study by the Administrative Officers. He told me more than once that it was the biggest professional assignment of his life. A torrent of words lasting for 60 hours or more by way of final argument was not a small exercise. I must recall that his preparation considerably helped me in formulating my Report. I measured time by reference to solar shadows in photographs for the first time in India and the Administration lost on this account despite the Counsel's dexterity.

Pandit Mukut Behari Lal Bhargava will be long remembered in the legal world and so also as an M.P. from Ajmer-Merwara.

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Late Pandit Mukut Behari Lal Bhargava— The Enlightened Man and An Undisputed Leader of the Bar

*C.N. Sharma**

Having known late Pt. Mukut Beharilalji Bhargava for more than two decades as a Senior Member of the Rajasthan High Court Bar Association. I am reminded of what William Faulkner had said in his Nobel Prize acceptance speech more than four decades ago. William Faulkner had said that man will not merely endure, he will prevail. Man is immortal, not because he alone among creatures has an inexhaustible voice, but because he has a soul, a spirit capable of compassion and sacrifice and endurance.

Members of the Bar and his other associates, who were closely associated with Late Shri Mukut Behari Lal Bhargava's manifold activities will readily agree that he had not only an inexhaustible voice, but he was a man gifted with rare virtues of humility, compassion, spirit of sacrifice and peerless endurance, so eminently displayed by him in all walks of life.

I am tempted to repeat what I had said sometime back, while felicitating Shri Bhargava on his completing fifty years of practice at the Bar. I had then said that when I think of Shri Bhargava, I muse, how glorious it is sometimes to be an exception. In this highly material world when everybody is trying

*Senior Advocate, Rajasthan High Court and Former Chairman of the Rajasthan Bar Council.

day and night to make you everybody else excepting yourself, it is really refreshing and heartening to see a few persons like Shri Bhargava taking up cudgels to remain themselves. Most people these days are prone to favours and privilege, but I know for certain that Shri Bhargava has shunned these frailities throughout. The reason why Shri Bhargava had chosen this uncommon path is that he had understood the real purpose and object of life itself. He had realised that the great and glorious achievement of a man was to live to a point: all other things, material gains and public acclamations were nothing but inconsiderate props and appendages.

Late Shri Mukut Behari Lal Bhargava had a special message and a note of caution for the younger and upcoming friends in the profession of law. He cautioned the youngsters not to treat the profession of law as a slot machine. According to his experience at the Bar, it was not correct for anyone to put into it as little as any one can and then expect to hit the jackpot. The profession of law, according to him, should be treated as a solid investment from which one receives in terms of what one has put into it. Shri Bhargava reminded his junior colleagues in the profession that just like a well known principle in physics, namely that in the expanding Universe, whatever force you exert in one direction is precisely what comes back from the other. Similarly the greater the effort and devotion to the profession of law, the greater will be the returns from it. There is no short cut to real success. Shri Mukut Beharilal cautioned that many people who felt frustrated at the end of the day are often themselves to blame. There is no such thing as a Superman. One should do what one reasonably can. Setting impossible goals help no one at all. It was precisely for such an understanding and exercise about the profession of law that Shri Bhargava found himself not only at the pinnacle of the profession but also a happier and wiser man.

Late Shri Bhargava was a curious mixture of simplicity, nobility, talent and obduracy. I have used the last word with caution. His patience was phenomenal. Perhaps he had learnt this last trait from nature itself. Just as you cannot hasten

sunrise nor alter the rhythm of a tide, so also you could not provoke Shri Bhargava into a hasty action. Success, everybody knows, is a combination of various attributes. The most challenging attributes of success are patience and courage. These attributes were indeed the foundation on which the whole fabric of Shri Bhargava's stature and station in life were built. Shri Bhargava had the wisdom to know that the length of one's education was less important than its breadth and the length of one's life was less important than its depth. Shri Bhargava had realised early in his life that happiness and success lay in its pursuit. He knew the importance of a well known maxim: it is not the sugar that makes the tea sweet, but the stirring.

I have sometimes wondered, what was the reason for the great power of influence which Shri Bhargava commanded and I realised that his power of influence was due to hard work, determination, his respect and love for others and his apptitude to speak less and hear more. Shri Bhargava in this sphere of human conduct and demeanor had become in his lifetime, a focus for the ever growing generation of new lawyers. If the fraternity in the profession or outside it emulates him, it is sure to become greater, taller and wiser.

Most people perhaps know that late Shri Bhargava lost his total eyesight during the period he was incarcerated in connection with the active role he played in the national movement in pursuit of Freedom from the British Rule. Many people in consequence would have been demoralised and caved in. No such thing happened with Shri Bhargava. On the contrary he not only continued to take active part in the struggle for Freedom, but achieved an unimaginable landmark in attaining the top spot in the cumbersome and tiring profession of law. Shri Bhargava was probably inspired by Billy Graham's belief that courage was contagious. When a brave man takes a stand, the spines of others are stiffened. Equally he might have learnt from the prescription of Oliver Wendell Holmes, that the great thing in this world is not so much where we stand as in what direction we are moving. Shri Bhargava had the intution to choose for himself the right path. Late Shri Bhargava had the

firm conviction that it was not proper to think that the world was divided into the weak and the strong, or the successes and failures; those who make it or those who don't. He believed that the world really was divided into learners and non-learners. There are people who learn, who are conscious and see what happen around them, who heed the lessons; when they do something stupid they don't do it again. And when they do something which works a little bit, they do it even better and harder next time. Shri Bhargava rightly thought that the question to ask was not whether you were a success or a failure but whether you were a learner or a non-learner. Such an understanding about the purpose of life on the part of late Shri Bhargava shows that he had drawn deeply from the storehouse of oriental wisdom and understood the basics of life. Shri Bhargava had indeed emulated Goethe who has said that what we do not understand we do not possess.

Shri Bhargava was not devoid of lighter moments of life. He always kept his humour and ready wit. Once when I asked him the reason of his joviality in the midst of engrossing work and usual mood of self introspection, he laughingly replied that he sometimes tries to find in the tavern what he had lost in the temple.

To conclude, Shri Bhargava was indeed an enlightened man and an undisputed leader of the Bar.

PART THREE

Selected Speeches in Parliament

1

On Hindu Code Bill*

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 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

*Constituent Assembly of India (Legislative) Debates 2nd April, 1949, pp. 2276—2289.

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 opinion that has been on record? I should submit in all humility that the weight of opinion that was sounded by the Rau Committee was predominantly 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, inlcuding 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 finally 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 sphere 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 reasons. 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 purpose 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 Bahadur 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 that 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 law. They based their *smiritis* 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 treaties 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 so 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 sources of Hindu law are streuded in mystery, try to codify the law? We are told that it is sought to introduce 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.

Even in regard to the law of succession, in cases where the rule of primogeniture exists by custom or in case of grants or *inam's* 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 this 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 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 opinon 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.

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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

*Responding to Smt. G. Durgabai who asked, "Are you opposing the Widow Marriage Act also?"

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.

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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 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 orginate 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

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@Responding to Shri L. Krishnaswami Bharathi who queried "Do you mean that the conflict should be permitted to continue."

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 country 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.

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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 opinions for were 112 and 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?

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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

*Responding to Smt. G. Durgabai who enquired, "what about monogamy?"

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....

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....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.

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 the 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 for those contemplated changes

are in consonance with Hindu ideology and Hindu ideals. My respectful submission is that this Hindu Code may well be styled as Islamic Code rather than a Hindu Code.

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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 clauses 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 is 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 incornoration of the provisions 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

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*Responding to Shri A. Karunakara Menon who said, "that is the reason why our friend Mr. Naziruddin Ahmad is opposing it".

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 no other revolutionary, nothing radical in this measure, and that in fact everything is just in accordance with Hindu conception, ideology and ideals. It is a preposterious 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 camouflage 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 to 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 knowledge 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 up to 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. According 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 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 Report, 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.

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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. 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.

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 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 Hindu. 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-establised custom of Hindu law. The Rau Bill proposed that the effect of adoption would be to divest 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 is: 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. 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.....

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Bengal, as far as my meagre knowledge goes is partly governed by *Mitakshara* and partly by the *Dayabhaga* system.* 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 intact 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

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*Responding to Shri Srijut Kuladhar Chaliha who said, "It is not prevelent in Bengal".

III-A only laid down that on the demise of a coparcener 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 the Act.

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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 to-day, 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.....

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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.

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*Responding to Shri B.N. Munavalli who asked, "Are there no disadvantages?"

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..... 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 over-whelmingly 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 descrepit, 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 Administered 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 Administered 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 Administered areas. Is it

the uniformity which is aimed at by this unique piece of legislation? Whether this will be in consonance with the ideal of uniformity or it is the opposite of it, may I respectfully ask? My submision 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 obyed 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 in-corporated 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.*

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What is the reason for the promulation 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 daugher, 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.

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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 here 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 tranquillity 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 a particualr ceremony which must be performed by the sister and her husband before the bride and the bridegroom 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, what ever 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.

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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

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*Responding to Shrimati G. Durgabai who enquired, "Do you think he would not discharge his moral duty if he allows his sister a share?"

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.

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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 protest 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 who 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, 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.

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*Constituent Assembly of India (Legislative) Debates 12th December, 1949 p.p. 464-474.

This is not 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 of 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 meet 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.

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Sir, in spite of the interruption of my hon. friend, I must assert that this House as at present constituted, is thoroughly incom-

petent to deal with a measure of this vital nature*. The question is.....

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.

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*Responding to Shri S. Nagappa who raised a point of order and said that the Hon. Member was 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.

**Responding to Mr. Tajamul Husain who also raised a point of order and said, "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?"

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 to 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?

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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 disqualification 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

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*Responding Shri Jagjivan Ram said, "Thirteen Shares".

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 off 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 very 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.

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 respectfully submission is that you will not be safeguarding the interests of the daughter by making this disastrous 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.

*If that is already given, then 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 congnisance 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

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*Responding to Shri L. Krishnaswami Bharati who said "we have already given that".

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 in 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 voidable. 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 incorported 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 exprience

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 leasson to us. We have not had this position in our society at any stage of our society and why should we introduce compuslorily the resort to court of law. Clause 34 provides that every dissolution or 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 a 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 out 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 submmission 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 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 onslaughts of so many centuries and has successfully stood in the world as the ideal from 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 permissive and enabling character. If that is so, why not scrap all these provisions from caluse 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 daugther?

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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 daugther to the bridgroom 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.

*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 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.

Under the rules of devolution after the father and mother who are the persons entitled to inherit the property of the female? If

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*Responding to Shri L. Krishnaswami Bharati who said, "It is not so bad in our part of the country."

it provides 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 perservation 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 ommissions 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 *shradhs*, 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 *shradhs*, 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 sucession 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 right is the patrimony. Does your code present any solution of this problem? Our Hindu law-givers or *smrirtikars* 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.

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 confusion 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 not wanted by judicial opinion in the country. There is no conflict of authority of such a serious character as to warrant the interference of a Legislature. There is no public demand for a measure of this character. The *quantum* of evidence upon which the Rao 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 overwhelming 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.

*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 established practice. It is a hoax that is ought 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

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*Responding to Shri S. Nagappa who said, "This Bill does not prevent sacramental marriages."

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 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 *Nibhandhaks* 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 forces 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 fegh 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 legislation 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.

*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 joint 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 to this measure, it wil 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.

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*Responding to Dr. Mono Mohon Das who said, "Is he not casting aspertions on some of the Members of this House? He has repeated the same thing so many times?"

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On States Reorganisation

*We have been considering the SRC Report for a pretty long time in this House. In spite of the big chorus of approbation and congratulations showered on the States Reorganisation Commission, I am sorry I cannot join in that praise. The controversy, the bitterness, the acrimony and rancour that have been aroused all through the country and even from the floor of this House show that the requisite atmosphere for the consideration of a serious problem of this character is not present. The overall consideration of the unity and security of the country requires that this problem should be shelved for the present and be kept in cold storage, but I see that where the mighty voice of such an elderly statesman as Rajaji has failed, the talk of an ordinary man—the feeble and weak voice of mine—is of no avail. Therefore, we have to see how we can, in the broader national interests, safeguard the unity and security of India which should be the primary consideration before every patriot and every parliamentarian.

My suggestion is that in the legislative enactment that will be brought before the House to implement the recommendations of the States Reorganisation Commission, there are certain very important points that should not be lost sight of. Those provisions of the Constitution which provide for the supremacy of the Centre over all its constituent units, must be safeguarded and put beyond the amending power and competence of Parliament. This is the only one method by which we can ensure the security of India and safeguard the unity of this

*Lok Sabha Debates, 20 December 1955, cc. 3330-3338 (Motion re. Report of the States Reorganisation Commission).

country. I mean article 368 of the Constitution, whereby any provision of the Constitution, the supreme and organic law of the land, may be changed, must be so suitably modified and amended so as to take from the competence of Parliament those provisions of the Constitution which provide for the supremacy of the Centre over all its constituent units of the federation. Article 248 gives the residuary legislative powers to the Centre and articles 352 to 360 which are enshrined in Part XVIII of the Constitution endow the Centre with over-riding powers in case of emergency. They must be taken away from the amending competence and power of Parliament so that the unity and security of India may be made sacred and sacrosanct for all time to come. Not even the requisite two-thirds majority of the members present and voting and a majority of the total membership of the House should, in any way, tamper with the sacred and sacrosanct character of the Constitutional provisions which ensure the supremacy of the Centre over its constituent units. This is the minimum that can safeguard and ensure the unity and security of India. I think the hon. Home Minister and the Law Minister will see their way to incorporate suitable provisions in this regard.

The other safeguard that I submit is, the provision incorporated in Part IV of the Report which ensures the protection of the linguistic minority groups must also be taken away from the sphere of the Executive. Otherwise, these safe-guards will remain as safeguards merely on paper. For this purpose, I suggest that a permanent Commission on the analogy of the Election Commission should be brought into existence and it should be all vigilant to see that the interests of the linguistic minorities are duly protected. That can only be done by making a suitable amendment in the Constitution itself.

These are my general observations on this intricate problem. Coming to my home State of Ajmer, I have to submit that, unfortunately, my State has received a very indifferent treatment at the hands of this high-power Commission. The entire

importance and greatness of Ajmer has totally been ignored and I will crave the indulgence of the House through you, to apply its mind and to see what is the problem and the grievance of this tiny State of Ajmer which has a population of about 7 lakhs and an area of 2,400 sq. miles. Its problem is of an absolutely different character as compared to the problem of the other constituent units of the Union. It has been geographically, historically, culturally and linguistically a part of Rajasthan. But, notwithstanding that, it is an incontrovertible historical fact that it has remained absolutely separate and it has never been politically and administratively a part of Rajasthan. Rajasthan saw the light of day only in May, 1949, but even prior to this, since the dawn of history, Ajmer has never been administratively and politically a part of any of the States composing the present united States of Rajasthan. History shows that Ajmer, from very early times, has assumed and obtained an importance which is a country-wide importance. The Pushkar Lake and the mountain range where Brahma, the creator of the world, had done *tapasya*, have given this beauty spot a religious importance which pervades throughout India. All through the years thousnads and lakhs of pilgrims from every part of the country, and particularly in the month of Kartik, assemble there and take a dip in the sacred lake. As tradition goes, the pilgrimage of all these pilgrims who have gone to all parts of India can never secure them the religious benefit they have in view, until they have taken the last dip in the Pushkar lake. Similarly, that great Muslim saint, Khwaja Moinuddin Chisthi, spent a valuable part of his life in Ajmer and breathed his last there. The Darga Khwaja Shareef attracts not only from the Muslim world in India or from Pakistan but from all over the world thousands and lakhs of pilgrims. Similarly, Ajmer is an important centre of the Jain relgion. Swami Dayanand, the great social reformer, and the founder of the Arya Samaj, breathed his last in Ajmer. Ajmer thus is the meeting place of the varied Indian culture. Therefore, the city occupies more or less a cosmopolitan position. It is the biggest centre of Christianity-Pre-sbyterians, Protestants as well as Roman Catholics in the whole of Rajasthan. Not only this, the entire course of Indian

history shows its importance. From the earliest times, till the time of Emperor Prithvi Raj, who was the last Hindu Emperor of India and who defeated Mohammad Ghori several times till he was over-powered on account of the treachery of Raja Jay-achandra of Kanauj, Ajmer has been shaping the events of history not only in Ajmer itself but in the surrounding States of Rajasthan like Jodhpur, Udaipur, etc. There are big bangalows built by the various princes of Rajasthan who frequently and regularly visited Ajmer to pay their homage. It was from this place that the centre wielded its authority throughout the Moghul period as also throughout the British period. It has been the centre of freedom movement and has led the struggule of independence in all the States of Rajasthan and Madhya Bharat throughout.

In March 1949, the fate of various States of Rajasthan was in a melting pot. It was then thought that all the various States of Rajasthan and Ajmer might be integrated together and that Ajmer should have a hand and voice in the shaping of the new Rajasthan. I from the floor of this House on the 17th March 1949 at the top of my voice raised this cry on behalf of my constituency and approached the then Home Minister and urged that Ajmer should be taken in along with the other units of Rajasthan in order that it might occupy the Central position which it had continued to occupy for centuries past. The then Minister of Home Affairs said that Rajasthan was never a State and for the first time they were making an experiment. He wanted to watch it. I would also like to mention here that the Rajasthan Provincial Congress Committee too adopted a resol-ution by an over-whelming majority that Ajmer should be integrated with Rajasthan and that it should be the capital of Rajasthan. That was the basis on which I presented this demand. That demand was turned down for reasons best known to the Government of India. Our apprehensions are that, because the Government of India had already committed to the Maharaja of Jaipur for locating the capital at Jaipur, the merger of Ajmer was not acceded to against the proclaimed wishes of the people. Now the picture of Rajasthan is complete; the

capital had been located; branches of the High Court had been established; all the other offices had already been located at the various places. What is the intention of the Central Government now? Why not this important aspect taken into consideration by the SRC?

I submit that even today the people of Ajmer are ready and will welcome the merger of Ajmer with Rajasthan only on the condition that Ajmer is made the capital of Rajasthan which is its legitimate demand based on historical, geographical and unassailable facts. It occupies a central position and is equally accessible to all the parts of Rajasthan. The Ajmer Provincial Congress Committee, the Ajmer Congress Party of the Legislature and such other bodies have with a unanimous voice said that they were not prepared to merge with Rajasthan unless and until Ajmer is made its capital. There are various reasons for it.

What are the reasons which the SRC has got for recommending its merger with Rajasthan? it has said in para 265 that all the part C States including Ajmer are economically unbalanced, financially weak, and politically and administratively unstable. Let us examine. What are the facts in respect of Rajasthan? Is it ecnomically viable and financially strong? I say: 'No'. The last budget presented, for the year 1955-56, shows an income of Rs. 22,30,00,000 while the expenditure is Rs. 24,69,00,000. There is a clear deficit of Rs. 239 lakhs. With the disappearance of the excise revenue to the tune of Rs. 275 lakhs there will be a deficit of about six crores. It cannot be said that the unit of Rajasthan is economically balanced or financially strong.

Coming to the administrative and political stability, I will ask the Home Ministry to turn the pages of its record and find out things. Is there any State in India which has been so unstable as Rajasthan? I would request you to allow me a few more minutes; I am the first spokesman on behalf of Ajmer.

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During the five years from 1949 onwards, there have been five or six leaders of the Assembly Party. Shri Hiralal Shastri, Jainarain Vyas, Shri Paliwal, again Shri Vyas and now Shri Sukhadia. But take the political stability of Ajmer. From 1st April 1952 we have one and the same Ministry. I talked about the change in leadership in Rajasthan; as regards other Ministers, I am not going to take the time of the House; the less said of it the better. Economically, Rajasthan is not a viable unit; its economy is not balanced. Political and administrative stability is only in theory. If these are the grounds for the liquidation of Part C States including Ajmer, these are the very same grounds for the liquidation of Rajasthan.

We mentioned to the members of the SRC that it would be in the interest of the country, if this is split into two parts: the Southern parts made into a separate unit with Ajmer as the capital; there will be the northern part independent of the Southern part. But that was turned down. Then the Commission says that in Part C States the development works have been ignored, but it is absolutely wrong. So far as the State of Ajmer is concerned very recently a very senior officer of the Community Project Administration visited Ajmer and I would invite the attention of the hon. Members of this House to the observations of that senior representative of the Community Project Administration. He has said that the development work in the Community Projects and National Extension Service Blocks of Ajmer is almost at the top. He has Characterised it as truly marvellous and he has said that, political and administrative considerations apart, smaller units are a great blessing to the intensive development work. So far as the basic educational institutions are concerned the verdict of the senior officer is that they are the best in India. Very recently a representative of the United Nations Organisation visited the State of Ajmer. He examined and inspected the prisons and the certificate that he has given should be a matter of pride not only to Ajmer but to the whole country. He says that the canteen arrangement in the prison of Ajmer which is entirely in the hands of prisoners as also the open air farming by the prisoners without any guard is an

example that can very well be copied anywhere in the world for making the prison life less irksome. Therefore, so far as the development works are concerned they are very satisfactory. It is far ahead Rajasthan in education and other nation building activity.

Then, lastly, I submit that it is entirely the responsibility of the Centre that Ajmer has been deprived of the valuable opportunity of securing her rightful place to which it was legitimately entitled. For that the entire responsibility is not of the people of Ajmer or the political parties functioning there, but of the Centre. Consequently it is not only the moral but also the legal responsibility of the Centre to see that now if it is to be merged and integrated with Rajasthan it must be given its rightful place and that should be laid down as a condition precedent to its merger.

I may also mention it for the information of the Deputy Minister for Home Affairs that the people of Ajmer or their representatives in Ajmer will not go with a begging bowl to the Rajasthan Ministry to make Ajmer its capital; make it a place to locate the High Court or a place of other importance because it is entirely the legal as well as moral responsibility of the Centre. Ajmer wanted its merger long before. It was kept back because of the Centre. Therefore, the entire responsibility is that of the Centre to secure Ajmer its rightful place.

Then, Sir, a few words about the State of Himachal Pradesh. My feeling is that this State has also been very unjustly treated. The Majority Report has brushed aside the claim of Himachal Pradesh to maintain its separate existence on the ground that there is no reliable evidence of the Home Ministry's any expressed undertaking. My friend who represented the case of Himachal Pradesh read to you the communique of the Home Ministry which had given an express undertaking to keep its autonomous separate existence for all times to come.

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It should not have been brushed aside on this ground*. Secondly, it has been said that the public voice in Himachal Pradesh is not consolidated against merger. There is a clear opinion expressed in the Legislative Assembly that the people of Himachal Pradesh are definitely hostile to their merger with Punjab, but even that had been brushed aside by the Majority Report. So far as Mr. Fazal Ali, the Chairman, is concerned, he has given two instances which conclusively established that public opinion in Himachal Pradesh is hostile to its merger. The first instance is that in the time of Sardar Patel when the note was prepared it was made clear that the people of Himachal Pradesh are opposed to such merger; that was long before the question of merger came. The second point is that in 1950 when the jurisdiction of the Punjab High Court was sought to be extended to the area of Himachal Pradesh the people with one voice opposed it and consequently the Government of India had to appoint a Judicial Commissioner in place of bringing Himachal Pradesh within the jurisdiction of the Punjab High Court.

Then again the question of its economic viability. Its jungles, medicinal herbs as also its mineral resources show that it has great possibilities and potentialities of being made an economic unit.

Fourthly, it has been said that it is in a strategic position and because it is in a strategic position, therefore, its separate existence cannot be allowed. But this has not been considered that defence is the responsibility of the Centre and not of any State.

My submission, therefore, is that Himachal Pradesh should also be kept as a separate entity and should enjoy the democratic set-up which it is at present enjoying, because to make it a centrally Administered Territory will be taking a retrograde step.

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*Responding to Pandit Thakur Das Bhargava who said, "It was never given".

*Mr. Chairman, Sir, we have been discussing the S.R.C. Report for a pretty long time in the country, and in spite of what has been argued with eloquent advocacy by the protagonists of these linguistic States, I must say—and I have no doubt in my mind—that the verdict of history will be that they are the greatest disruptors of the security and unity of India.

Whatever may be the views of old Congress leaders in respect of the formation of linguistic provinces at the time when the country was involved in a life and death struggle of the emancipation of the country from thraldom and slavery under foreign rule, the view of Congress leaders after the attainment of freedom were bound to undergo, and have in fact, undergone, a change for the better. The Dar Commission Report and the J.V.P. Report clearly indicated that reorganisation of States purely and absolutely on the linguistic basis is only a medieval slogan and a medieval conception.

The formation of Andhra, which, I respectfully submit, was formed under the shadow of the great tragedy of a patriot—it emerged suddenly not as the deliberate result of the consideration of this question on a national level but under the shadow of a tragedy—was the precursor of this linguistic fanaticism which we are seeing for some time in the country, and the exuberance of which has come to the forefront after the publication of the S.R.C. Report. But if we analyse this Report, we find that even the distinguished personnel of this distinguished body refused to accept the theory of one State, one language. In fact, though the argument was refuted, the irony of fate is that their ultimate recommendations are mainly based upon the formation of States on a purely linguistic basis. The only exception made is in the case of the bilingual composite State of Bombay and Punjab. We have seen that the present Bill, as it has emerged out of the Joint Committee, has gone back upon those recommendations of the S.R.C.—whatever may be the

*Lok Sabha Debates, 28 July 1956, c.c. 1370—1376 (Taking part in the discussion on "States Reorganisation Bill").

reasons, that is a different matter—with the result that the composite State of Bombay is now to be replaced by a bleak Maharashtra, by a Mahagujarat and a tiny city State of Bombay. The recommendation as to Punjab has also not been accepted by the Joint Committee and whatever is envisaged by this Bill is a truncated Punjab.

It has been argued by the advocates and protagonists of these linguistic States that everything will cool down after these passions have died down. We have seen—and there have been arguments about it—that the logical consequence of the formation of States on a linguistic basis is the question of the protection and safeguards to the linguistic minorities. What ever may be said in favour of the linguistic States, any dissentient voice, at this state, will be but a cry in the wilderness. But, still, it is my honest conviction that the virus of communalism injected into the body politic of the country, by the acceptance by our leaders of the Congress in the 1916 session, of the communal electorates, ultimately caused the vivisection of the motherland and the formation of two sovereign States of Pakistan and India. This poison of linguistic fanaticism which is now being injected and which as a result of the acceptance of this Bill, will permeate the entire body politic of the country, I have no doubt, will create a great trouble for us in the future. I know it is difficult to stay out and to cry halt at this stage. But it requires the indomitable will and the dauntless courage of the Mahatma to say halt to this linguistic fanaticism. If this cannot be done and if it is said that it is too late, it is never too late to mend a blunder. But, if that cannot be done, how can we protect the security and unity of India and what is the guarantee that this cry of protection of the rights of minorities, as a result of the creation of these linguistic States, will not lead to the same results as a past experience of communal minorities has proved? The cry of safeguards for the minorities on a cultural and educational level will be extended to the representation of the minorities in the Legislature and the services. The cry, though it may be subdued in tone, is already there and nobody who has the interest of the country at heart and soul is an

ardent nationalist can look with equanimity at this. We did attain freedom after a struggle for 60 years and that struggle is not yet over. Our struggle against a foreign power has come to an end: but the struggle against poverty, the struggle against squalor, the struggle against disease and our struggle against the disparity in income is still there. Having accepted the goal of the establishment of a socialist pattern of society, we have to pool all our energies and this question of the formation of linguistic States is most untimely and inopportune. It has already diverted the energies of the nation to the extremely low level of linguistic fanaticism with the result that a new problem is confronting us and we have to question seriously, 'Are we really a nation?'. The claim has been advanced in abiter tone, with passion and on a mean level that this patch of territory must be included in the State of Bihar or this must go to the State of Bengal or that Bombay is the city belongig to the State of Maharashtra or to the State of Gujarat. But the pre-eminent question that must be before every nationalist is whether it be a territory here in the State of Bihar or in the State of Bengal or in the city of Bombay, it is pre-eminently of India and not at all of the linguistic State or group and it is on this national level that we have to consider these questions.

Our common allegiance to the magnificent Constitution guarantees common citizenship and common rights to every individual whether he belongs to any linguistic State or resides in a particular State. A man residing in the southernmost corner of India has a right to seek election to Parliament from any part of India. Is this conception that a particular territory must belong to a particular State consistent with this right of common citizenship which is guaranteed to every citizen of India under our splendid Constitution? Therefore, my submission is that the entire debate that has taken place in this august House, which is supposed to represent choicest of intellects of the country, must be an eye-opener to every person who has the best of the country at heart. The debates in this House, on the three occasions when the question of State reorganisation was discussed, are reminiscent of a time when a part of this House

was occupied by the Muslim League Members of Mr. Jinnah. Consequently, it is time for us to take stock of the situation and to accept, if it is inevitable, the recommendations of the Joint Committee which represents the collective and deliberate wisdom of a large number of the distinguished Members of this House.

After these general observations, I have to make some remarks about the integration of the State of Ajmer with Rajasthan. I have, on previous occasions, drawn the attention of the House as also of the hon. Minister of Home Affairs that the integration of Ajmer with Rajasthan has to be made only if the interests and the importance of the State of Ajmer are safeguarded in the future set-up of the reorganised Rajasthan. The State of Ajmer has been kept apart from its natural moorings for centuries, not because the people of Ajmer wanted it but because it suited the interests of the Government at the Centre. For a time the last Indian Emperor Prithvi Raj made Ajmer the capital of his empire in preference to Delhi and thereafter during the Moghul, the Maratha and the British period, Ajmer has been occupying a pre-eminent position and determining and shaping the course of events in all the neighbouring and surrounding areas of Rajasthan. It is not because of any favouritism to Ajmer but because of its natural, elevated position that it has been responsible for the decisive role it has played throughout its history. During the period 1948-49, the union of Rajasthan was in the process of formation and them we, the people of Ajmer, from the top of our voice raised this cry, namely that the integration of Ajmer with Rajasthan should be simultaneous with the other States of Rajasthan and it should be made, on account of its central and elevated position, the capital of the new Rajasthan. That was not the cry of Ajmer only. The view of the people of Rajasthan was expressed in the then Rajasthan Provincial Congress Committee that there might be simultaneous integration of Ajmer, with Ajmer as the capital of the new Rajasthan. At that time, the hon. Home Minister and the Government of India on grounds of political expediency turned down this request, with the result

that the State of Rajasthan was formed leaving Ajmer as an enclave of bureaucratic regime. Thereafter we fought for the democratisation of its set-up and got it after struggle, but now has come question of merger.

At this stage we are asked to approach the Rajasthan leaders in respect of the location of the capital. The Rajasthan leaders have shown their adamant and unsympathetic attitude. At the last conference which the representatives of Ajmer had with the leaders of Rajasthan, those leaders refused to consider the question on its merits and turned down our request even for the appointment of an impartial commission to examine the question of capital. Our claim is that if from every point of view, from the point of view of suitability, easy accessibility, from every part of Rajasthan, its central and elevated position, its salubrious climate, it deserves to be the capital of Rajasthan then and then only it should be located there. But they have turned down our request and are not prepared to reopen or re-examine the question. Our request that the matter may be left to the decision of the High Command has also been turned down. Then what remains? The Central Government's political expediency suited it not to integrate it with Rajasthan with the result that it has been deprived of its rightful and honoured place which it deserved in the State of Rajasthan. Why should not the Central Government step in exert its influence and persuade the leaders of Rajasthan to accept the justice of the case?

There is clause 52, which I welcome in the new Bill. Under this clause it will be open to the President to decide the suitable place for the location of the seat of the High Court, if for certain reasons the question of the capital cannot be immediately decided and has to be deferred for some time, our demand was that, on account of its central position, historical, geographical, cultural, national and even international importance, the High Court of Rajasthan should be located there. But even that request has fallen on deaf ears. I can only press upon the hon. Minister to do justice to Ajmer, because it was on account of the attitude of the Central Government that it was not

integrated in 1948-49, with the result that it was deprived of its rightful and honoured place. If that was so, at least while determining the question of the location of the seat of the judiciary of the High Court, Ajmer has a claim and that claim has to be recognised. There is no reason why this moderate demand should not be sympathetically considered and steps be taken to implement it.

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*Before coming to the clauses 16 to 49 which are the subject matter of discussion, I would like to associate myself wholeheartedly with the sentiments expressed by our ex-Finance Minister, Shri C.D. Deshmukh, and lend my full and wholehearted support to the composite bigger bilingual State of Bombay. Bombay which has been the main issue in the debate is no longer a parochial or a regional issue, but a national issue and I hope the Congress Party will give full freedom to its Members to vote for the composite bigger bilingual State of Bombay. That is essential for the solidarity and unity of the nation.

Clauses 16 to 25 envisage the setting up of certain zonal councils. The proposal is to divide the country into five zones and to provide for the consultation and collaboration of a group of States included in a zone on matters of common interest, but as the scheme stands. I am very doubtful if it will serve any useful purpose. If you look at clause 23 you will find that the functions of these councils will be to collaborate and consult with one another regularly on questions of social and economic planning, border disputes, minorities, inter-State transport and matters connected with the arising out of the reorganisation of States. It has been suggested in one of the amendments that has just been moved that the State Governments and the Central Government may delegate certain powers to the zonal councils, but the councils as envisaged in the provisions of the Bill will be absolutely advisory, consultative and recommenda-

*Lok Sabha Debates 3 August 1956, c.c 2130—2134.

tory. Consequently, the functions that are assigned under clause 23 are of a very general character as, for example, social and economic planning. That will cover everything and that will not cover anything. It will depend upon how. When they meet under the chairmanship or the Presidentship of the Central Minister, they decide to discuss certain questions.

But the most important functions that are being assigned by clause 23 are the settlement of linguistic minority questions and border disputes. I respectfully submit that it is understandable how these Councils will play an effective and decisive role in deciding these questions of great importance. As already pointed out by my hon. friend on his amendment, these provisions cannot in any way afford any protection to the linguistic minorities. That has to be done by certain constitutional provisions in the Constitution or by a special law made by Parliament. Unless certain constitutional limitations are embodied in the Constitution or a special law is made by Parliament for the purpose these Zonal Councils will have no data, no specific policy, according to which they can take any decision with respect to the protection or safeguarding the interests of the minorities. Consequently, along with these provisions, a law must be made in respect of the settlement, laying down the principles for the settlement of border disputes. As we have seen throughout the debates, there are a number of disputes as between one State or more than one State and another State and unless and until the law lays down certain specific principles, either in agreement with the States or otherwise, it will be impossible for these zonal councils to discharge efficiently and to the satisfaction of all the functions that are sought to be assigned to them.

As regards social and economic planning, I think it is too vague a term and it would have been better if some more specific objects had been laid down as to on what particular subjects it will be possible to collaborate and consult. However, if the only object of these zonal councils is to serve as an antidote to the cry for linguistic fanaticism, then it is a step in the right direction and I accord full welcome to them. During the

course of time when it may be realised that the formation of linguistic States was not a happy one, the zonal councils may furnish the germ for the development of bigger units and as pointed out bv one of our friends preceding me, for the constitution of the bigger State in the South.

The third pcint that I want to press is in respect of the democratisation of the administration in Part C States. The problem of the Part C States has been hanging fire for a considerable period. In the Constituent Assembly also the question of the Centrally administered areas arose and they were first included in Part C. The other States that had just merged as a result of the union of the existing States like Himachal Pradesh and Vindhya Pradesh and others were also there as Part C States and before the Constituent Assembly the question arose as to what democratic set-up should be given to these small States. At that time it was suggested that it was not possible to have democratic set-up as they have no experience in responsible form of Government. The Patabhi Report envisaged the extension of the democratic set-up to these States; but it was not accepted. But articles 239 and 240 were incorporated in the constitution itself. Thereby, Parliament was authorised to give to these areas any type of democratic administration equivalent even to the democratic constitution enjoyed by Part A States and it was after a relentless struggle carried on the floor of the House for a number of years that we, the representatives of the Part C States, succeeded in getting the Government of Part C States Act passed by this Parliament.

One of the main objectives why the S.R. Commission was appointed was to do away with the differences between classes of States, namely, A, B and C, and the S.R.C. Report in fact did try to remove the three categories of States. They recommended only certain Centrally administered areas and Part A States. But it is strange to find that the Joint Committee has chosen again to revert to the old classification and categorisation of the constituent units of the Indian Union, dividing them into three categories, namely, A, B and C. So far as Part B States are concerned, the proposal is to include Jammu and

Kashmir only as Part B State. All other States have been lifted to Part A. So far as Part C States are concerned, the latest addition to the surviving States of Himachal Pradesh, Manipur, Tripura and Delhi is the city of Bombay. So far as S.R. Bill is concerned, it does not repeal the Government of Part C States Act of 1951. But, as we see, in the Constitution (Ninth Amendment) Bill there is a proposal to modify or amend articles 239 and 240 and looking at the proposed amendments, as incorporated in that Constitution Amendment Bill, one cannot fail remarking that it is a retrograde step. The proposal of the Government of India appears to be that these areas, which are now being categorised as Part C States, will have no democratic set-up. I respectfully submit that it is an absolutely retrograde step. We have to keep in our mind the preamble of our magnificent Constitution, which guarantees to all citizens of India a democratic sovereign republic—we all constitute ourselves into a democratic sovereign republic—which shall procure for them justice, social, economic and political; and equality of opportunity. If the small States of Manipur, Tripura, Delhi. Bombay and Himachal Pradesh are not given any democratic form of government—two of them Delhi and Himachal Pradesh, are already enjoying this democratic form of government and if the legislatures in the existing two States are abolished, I ask you, how are you going to redeem the pledge that you have solemnly taken to give to all citizens of India justice, social, economic and political and equal opportunity to all. People living in those areas will have no responsible government and no voice in the administration and the legislatures, where they exist, will stand abolished. I respectfully submit that it is not in keeping with the Republican Constitution of India. This is an anachronism at the present time and I think that this black spot in the S.R. Bill must be washed away and those areas must have at least the form of responsible government that is incorporated in the Government of Part C States Act, Otherwise, we will not be true to the pledge and the Preamble of our Constitution.

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*I want to make a few remarks on clause 52. Under that clause, it is the President who has the power to determine the location of the High Court in any new State. I want to submit that there is a distinction between sub-clauses (1) and (2) of clause 52. So far as the location of the permanent benches of the High Courts, in addition to the seats of the High Courts, are concerned, the President will be bound to consult the Governor of the State as also the Chief Justice of the High Court. But, so far as the location of the seat of the High Court itself is concerned, according to sub-clause (1), it will be under the sole jurisdiction of the President.

The States of Ajmer is being merged with the State of Rajasthan now. The question of the location of the capital is hanging fire and no decision has been taken. As I have said during the course of the general discussion, it is primarily the responsibility of the Central Government— the Ministry of Home Affairs— to get the matter settled with the leaders in Rajasthan, because it was the Central Government which was responsible for the non-integration of Ajmer at the time when the peoples of Ajmer and Rajasthan wanted simultaneous merger and the location of the capital at Ajmer. But so far the Ministry of Home Affairs has not taken any interest and has not seen the justice of the case.

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I was saying that in view of the fact that it may be said that the Central Government cannot exert its influence on the Rajasthan Government in respect of the location of the capital because it is primarily a provincial matter still it cannot be said in respect of the location of the seat of the High Court in Ajmer. My respectful submission is that looking to the fact that it is situated at the centre and in the heart of Rajasthan and that it is equally accessible from all the main centres, it will not only be in the interest of the people of Ajmer but in the interest of the people of the entire State of Rajasthan that the High Court should be located here, because the entire litigating public will have free access to the place at lesser expense. For example, people from Udaipur, Kotah and Bundi have to pass through Ajmer while going to Jaipur or even when they go to Jodhpur where there is a Bench of the High Court. Consequently, from the point of view not only of the people of Ajmer but the larger interests of the people of Rajasthan it is essential that justice should be done to Ajmer and the main seat of the High Court

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*Lok Sabha Debate 6 August, 1956 c.c. 2318—2320.

should be located in Ajmer in place of Jaipur where it is at present. In respect of sub-clause (2), my respectful submission is that unless there are very exceptional circumstances, the practice of having a number of Benches of the same High Court at different places is not at all in keeping with justice, because if the litigation is not very high, there is absolutely no justification for locating permanent Benches at different places simply to satisfy the whims and caprices of the people of that particular locality. If the litigation is of such a volume as to justify having Benches at different places, that may be a different matter, but so far as Rajasthan is concerned, I respectfully submit that the number of cases does not justify the setting up of different Benches of the High Court. Looking to the justice of the case, looking to its central position and looking to the fact that it is the Central Government's responsibility to preserve the importance of Ajmer and that it was on account of the Central Government that Ajmer was deprived of its rightful and honoured place as Capital of Rajasthan, I would respectfully submit that it is essential that the Central Government should take a decision that the seat of the High Court of the new State of Rajasthan will be located in the City of Ajmer.

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Sir, I congratulate the hon. Mover of this bill for affording me an opportunity to give expression to my views on a very important question. The Bill raises the fundamental question of the power and jurisdiction of the Benches of the High Courts. On a plain reading of section 51, clauses 1, 2 and 3, one fails to understand as to why the Kerala High Court should have come to the decision to which it has come. So far as the setting up of a Bench of a permanent character, as envisaged by section 51(2) is concerned or so far as setting up of a Bench of a temporary character as contemplated by section 51(3) is concerned, that deals only with the question of the temporary or the permanent character of the Benches. But so far as the jurisdiction question is concerned, the Bench, whether it be permanent or temporary, must have the same jurisdiction as the main High Court itself. It is un-understandable that on the language of the section, with due deference to the view of the Travancore High Court, how it could come to the conclusion that the jurisdiction of a Bench temporarily formed under section 51(3), which is to be set up by the Chief Justice in consultation

with the Governor, is restricted. That does not deal with any restriction upon the jurisdiction of such a Bench.

If the matter is considered further and if that interpretation is to prevail that interpretation must only govern the temporary Benches set up under section 51(3). But that can equally apply to the permanent Benches to be set up under section 51(2). That means that the institution of appeals and other proceedings can take place only at the main seat of the High Court and the permanent or the temporary Benches will deal with only such cases which are transferred by the seat of the High Court. If this is the interpretation the very utility of this provision will go. I respectfully submit that the question that is raised by this Bill is of a fundamental and substantial character. If we go into the genesis of the view that has been expressed by the Travancore High Court, it appears that the confusion has been created by the Law Commission's report that came up for discussion before the House yesterday. The Law Commission has, in its interim report submitted on the 26th of August, come to the conclusion, to a very firm and unanimous conclusion that there should be in every State a unified seat of the High Court. It expressed unequivocally and in unambiguous language against the establishment of or continuance of Benches in any State. This is a question of fundamental character.

So far as the Government of India is concerned, so far as the responsibility of the President under section 51 is concerned, the Government of India has chosen to take a lukewarm attitute. It has not so far expressed itself whether it is going to accept that recommendation or it is going to reject it. It is on account of this wavering and vacillating policy that this confusion has arisen. The interpretation that has been given by the Travancore High Court restricting the jurisdiction of a temporary Bench under section 51(3), is I respectfully submit, a result of the vacillating policy of the Government of India. This matter should not be allowed to go on in this manner. It has already affected the State of Rajasthan in as-much-as the Rao Commit-

tee report made this recommendation of the Law Commission as an excuse for its strong recommendation in abolishing the Bench from Jaipur. The question has to be considered. Why is the Government, which stands for equal treatment for all, which is guaranteed to us by the fundamental rights enshrined in Part III of the Constitution, following this discriminating policy from State to State? If the policy of Benches is to be accepted, all the States must have the same facility.

So far as public opinion is concerned, it has asserted itself and it has been, wherever expressed, expressed in favour of Benches. The reason is quite clear. It is an accepted policy or rather, it is primary duty of every civilised State to make dispensation of justice as cheap and as expeditious as possible. The policy of having different Benches with jurisdiction over different regions of the same State is but a necessary result of this policy of cheap dispensation of justice. I would pray to the hon. Home Minister that, in view of the fact that this vacillating policy has been responsible for creating injustice to the people of Rajasthan, it will now come to a firm conclusion and announce whether it accepts the recommendation of the Law Commission for a unified seat. If that is to be done, it must have the courage and determination to implement that recommendation in respect of all the States and not victimise Rajasthan alone.

Again, if a unified seat of High Court is to be located, it must be located at the central place: in Rajasthan in a place like Ajmer or some central place, not in a nook or corner where people will have to travel 300 or 400 miles for institution and for hearing. It is a well known fact that litigants usually like their cases to be conducted in the appellate court by the lawyers whom they had engaged in the lower court, and that means a great expenditure to the litigants.

I respectfully submit that if Government accept the policy of unified seat of a High Court, then in my State, the High Court must be shifted and brought to a central place; if they do not, then the injustice done to my State of Rajasthan should be

undone by re-establishing a Bench at a Central place or at Jaipur or at any other place.

With these words, I wholeheartedly support the Bill.

3

On Useful Cattle Preservation/ Go Samvardhan Bill

I also wish to say a few words in wholehearted support of this Bill*. Those hon. members who have spoken before me come from Part A and Part B States. I come from one of the Part C States. I have a special right to express myself on this question.

The Bill has a very very limited scope, and the opposition of Government and my hon. friend the Deputy Minister of Food has come as a great surprise to me.

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My hon. friend reminds me that he has not openly opposed it**. Any way, the attitude which he has taken is merely a sabotage of this Bill. So far as this Bill goes, there is one limited question. The underlying principle of this Bill is that henceforward, there will be no slaughter of useful cattle in any of the Part C States and if a person is directly or indirectly responsible for the slaughter of useful cattle in these parts of the country, he is liable to be punished. This is the only point on which this Bill is based. I was rather shocked.

My learned friend on the opposite Bench took a very comprehensive view of the proposed Bill which is under the sleeves of Government, and which has been under contemplation of Government for a pretty long time and an indication of the outlines of the Bill was given in his brief remarks to the

*Useful Cattle Preservation Go Samvardhan Bill, discussed in Lok Sabha on 12 December, 1950.

**Responding to Shri Sondhi who said, "He is not opposing it."

House. But, on the very material point, and the only point which is the subject matter of this Bill. Unfortunately, the Deputy Minister of Food was conspicuously silent.

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The point is whether Government accept the principle that henceforth, there will be no slaughter of any useful cattle*. If that is accepted, then, there will be no hurdle whatsoever for this Bill being brought on the statute book once for all. As far as I could understand, though my hon. friend was very elaborate on the virtues of his contemplated Bill, and pointed out that the Bill will not only provide for useful cattle, but also for useless cattle, he did not mention in so many words that Government have the immediate intention of banning slaughter.

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It that is so, I fail to understand why there should be any objection to my hon. friend bringing this Bill on the statute book.** If Government admit this principle and if that is going to be a part of the statute, unless and until such a provision is accompanied by a penal provision to the extent that if any person is directly or indirectly responsible for such slaughter, he will be punished, the right will be without any remedy. Consequently, if this right is admitted, and if the remedy is provided, that is penalty for any infringement of this right is agreed to, then. I think there can be obsolutely no objection on behalf of Government to the passage of this Bill and I do not see any reason why this Bill should not be put on the statute book here and now.

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I am thankful to my learned friend for pointing out the anxiety

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*Responding to Shri Thirumala Rao who said, "What is the point?"

**Responding to Shri Thirumala Rao who said, " I can assure the House that it is the intention of Government to include in the Bill a provision for the prevention of slaughter of useful and productive cattle. Prevention of such slaughter will be one of the main items.

of Government.* Though I am not so wise as my learned friend, I am unable to understand why this Bill should not be passed now. The provisions of the Bill, which was outlined by the hon. Minister, were very alluring and I certainly welcome some of the provisions which have been made in the Bill under contemplation. That may be enacted into law in the next session. So far as this narrow point covered by this Bill is concerned, this Bill will in no way whatsoever come in conflict with that Act and consequently, I fail to understand the value of this objection. In fact, it was the duty of the Central Government which is certainly responsible for the centrally administered areas, the present Part C States, to bring on the statute Book a legislation of this character. So far, Government have not found it possible. On behalf of the people of Ajmer and the people of other Part C States. I offer my sincere thanks and gratitude to my hon. friend Pandit Thakur Das Bhargava, who has piloted this Bill with conspicuous ability. It is absolutely essential for the well-being of the people that our cattle wealth should be preserved to the best of our ability.

It was pointed out by one of the speakers that we have got such a large cattle population that we are unable to maintain and therefore on economic grounds, it will not at all be useful to preserve these cattle. I repudiate the insinuation behind any such assertion in in the House. It is the sacred duty of every one of us to preserve at least the useful cattle which gives milk, which is to us next to our mothers. I was surprised when the hon. Minister said that there was a very large number of stray cattle in holy places like Hardwar, etc., which are not looked after. I understand this legislation does not cover the whole of India. I would very much like the provisions of this Bill to be applied to the whole of India. As the Bill stands, it has got a very limited applicability, only to the territories of the Part C States. No example of this type has been cited by the hon.

*Responding to Shrimati Durgabai who said, Government are anxious to provide for these things.

Deputy Minister of any places situated in any of the Part C States. As far as the State of Ajmar is concerned. I am very well acquainted with the conditions there and I can certainly say that as far as protection of cattle is concerned.....

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Certainly, there are*. They are in Pushkar, in Ajmar, in Nasirabad and also in Beawar, and it can be asserted with a real sense of pride that so far as the *goshala* at Beawar is concerned, it ranks among the best in the whole of India, and that is also the commentary or opinion of the Government of India about this *goshala*.

Therefore, as far as the part of the country from which I come is concerned, I support this Bill and I consider it to be absolutely essential and Government should not in any way obstruct the passage of this Bill. My submission is that even though that very beneficial piece of legislation, the vision of which we got a little from the remarks of my hon. friend sitting opposite, may be coming, the alluring picture of that proposed measure should not be an obstacle to the passage of this Bill. If this present Bill is brought on to the Statute Book, the number of cattle, that will be driven to the slaughter house during the period between now and the time when the provisions of he proposed Bill come into force, will be preserved, and the preservation of even one single useful cattle is a thing worth doing.

I do not want to take up any more of the time of the House. I only submit that the passage of this Bill should not be obstructed, and I would, therefore, request my hon. friend the Deputy Minister of Food not to object to the provisions of this Bill, especially as the provisions of the Bill that he has under contemplation will only be supplementing the provisions of this Bill. In fact, before the provisions of his Bill can serve any purpose, the life of the cattle has to be preserved, and that is what is sought to be done by the provisions of this Bill. I

*Responding to Shri Thirumala Rao who said, "Are there *pinjrapols* there?"

therefore, whole-heartedly support this measure and request that it should be brought on to the Statute Book as early as possible.

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We have been hearing about this *Go-samvardhan* Bill for a pretty long time and now we have it before us, but simultaneously with its introduction the hon. Minister has requested the House that debate on this Bill should be very very short so that it would enable him to go through with the Bill during the present session.* He also told the House that he has given considerable thought to its provisions and that as they are of a non-controversial nature there need not be every long debate on it.

The House remembers that it had to deliberate on several occasions in the past on this very subject. There was the non-official Bill moved by my friend, Pandit Thakur Das during the discussion upon which we were assured that as the Government intended to pilot a comprehensive Bill on the subject that non-official Bill need not be pressed. Well, I have gone though the provisions of this Bill but I find that the most important thing which was the subject-matter of Pandit Thakur Das's Bill is disappointingly missing from this Bill. One of the main objects of this Bill appears to be the organisation of Central and State Councils of *Go-samvardhan* in Part C States. The setting up of a *Go-Samvardhan* Fund contemplated under clause 10 is another object of the Bill. The third object is that every *gowshala,* established or maintained on the day the Bill comes into force in any Part C State should be registered under the provisions of the Bill; it is also provided that such registration shall be compulsary for newly started *gowashalas* or *pinjrapoles.* These, in a nut-shell, appear to be the objects of this Bill.

Now what were the objects of the non-officials Bill moved by Pandit Thakur Das? As far as I remember it was a very small, two-clause Bill and its only object was that the slaughter

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*Go-samvardhan Bill, 4 June 1951.

of useful and productive cattle may be absolutely banned in Part C States. And on that occasion the hon. Minister as also the Deputy Minister assured the House that the Bill which they were drafting, which is now before the House, will cover the important provisions of Pandit Thakur Das's Bill. But I am very sorry to say that there is no provision here which absolutely bans the slaughter of useful cattle in Part C States, and therefore with this important object missing from this Bill I sumbit the house, on that occasion, when it was assured that non-official Bill need not be pressed, was misled by the assurance of the Government. As I submitted then and as I reiterate today, it was nothing but an assurance by Government in order to sabotage the main principle of that Bill, namely the banning of slaughter of useful cattle in Part C States. Is there any provision here towards that end? My hon. friend may lay his fingers on clause 4 which lays down that it will be within the powers of the Central *Go-samvardhan* council to make regulations for the banning of the slaughter of useful and productive cattle. But that regulation may or may not be enacted by the council. In fact, if I may be permitted to remark, this is only an attempt to defer the main question of whether this Government is or is not prepared to ban cow slaughter in Part C States. We were told that this Bill which was intended for application to Part C States would in fact serve as a model for all the States to follow. I submit, Sir, the provisions of this Bill are wholly disappointing and should not be accepted by the Select Committee as they are. One particular fact to which the Select Committee must attend is the absolute prohibition of slaughter of useful cattle anywhere in Part C States and to provide for sufficiently high penalty for contravening those provisions. Now this was the one objective with which that non-official Bill was moved and this is the one objective that is missing here. I am very doubtful whether it will be open to the Select Committee to go to that extent because the prohibition of laughter of cattle as such, it may be argued, is absolutely beyond the scope and ambit of this particular bill whose main object is to establish *Go-samvardhan* councils. If that is so, I respectfully submit it is no use going ahead with this Bill.

Already there are *pinjrapoles* and *gowshalas* in various Part C as also other States which have been running without any state aid even when the foreign Government was in existence; even from earlier days private charity has been doing its best for the preservation and protection of cattle. I know in Ajmer there are a number of *goshalas*. If the Government has the intention of giving protection to these *gowshalas* or of assisting them, they can do so otherwise than through this Bill. Sir, no one can say that the objective of Government to preserve and protect the cattle and improve the bread is not a good objective, but before the breed or quality can be improved the life of the cattle must be saved. Therefore if this *sine qua non* of prohibition of slaughter is not the object of the Bill and if the Government is not prepared to go that extent, I say it is useless to claim that any real protection or preservation is sought to be achieved through the provisions of this Bill.

My submission, therefore, is that the Government must make it clear that it will be within the scope of the Select Committee to absolutely ban the slaughter of useful cattle in Part C States. This must be first condition. After fulfilling that condition alone need Government look into the question of establishing *Go-samvardhan* councils as contemplated in the Bill and whether the scope and sphere of acitivity of those councils should be as restricted as is laid down in clause 4.

Then, Sir, it is said that this Council may enact certain regulations whereby it may ban the slaughter or prohibit the slaughter of useful and productive cattle and any contravention of such a regulation will be punishable with a fine of Rs.100 or simple imprisonment of one month. I submit, sir, that looking to the conditions in the country, looking also at the fact that a very large number of useful cattle are being slaughtered, this quantum of punishment is ludicrously low. If it is your object to ban and prohibit the slaughter of useful cattle, then those who infringe this law must be adequately and sufficiently punished.

Then, sir, the motion for circulation of this Bill is more or less of a dilatory character inasmuch as there cannot be any difference of opinion in the House or in the country upon the necessity of giving protection to the cattle and improving their breed. On this matter there is complete unanimity of opinion in the country. As much I submit that the motion for circulation may not be accepted, or in the alternative the hon. Minister should make it clear that it will be open to the Select Committee to go into the question of prohibiting the slaughter of cattle. If I understood him correctly, it will not be within the scope of the Select Committee to enter into this proposition as to whether cattle slaughter could be prohibited absolutely. It can only deal with the question as to how the State Samvardhan council, or the Central Samvardhan Council should be organised and what will be their functions, duties, etc.

Another object of this Bill is to establish what is called *Samvardhan* Fund under section 10 and it is contemplated in section 13 that it will be open to the Central *Samvardhan* Council or its branches to levy a cess on the sale of cattle on occasions of fairs, or markets. Now it has not been specified what is going to be the quantum of such a cess and what will be the purpose for which this fund will be utilised. It is also not quite clear from the provisions of this Bill what Government shall contribute to this Government shall contribute to this fund. My submission is that the Select Committee should make it incumbent upon the Government to make a contribution of at least 50 per cent of what is realised by the imposition of the cess or by private donations. Until and unless this is done, the institutions will starve and the Central and the State Councils in the absence of sufficient funds at their disposal will not be in a position to do much. The Select Committee should therefore make it incumbent upon the Government to make a certain percentage of contribution annually and that should not be less than 50 per cent of what will be realised by the central council or the State Council through the imposition of cess or through any private donation.

Then, Sir, the Bill should be more specific about the functions of these State Councils, in what manner the staff are to be maintained by the State Councils so that they may render effective service to those institutions which exist in various parts of the country. It is possible, as has been the practice with funds collected by such institutions that a good portion of it may be utilised only for the purpose of maintenance of staff and a very small portion of it may go for the benefit of the institutions which are sought to be benefited.

Then, Sir, I leave it to the Select Committee to see whether it should make it compulsory that every institution either existing today or which will come into existence hereafter will necessarily be registered. My submission is that our experience of governmental institutions and the working of their machinery has so far not been very satisfactory and if registration is made compulsory it may amount to undue interference with the activities of such charitable institutions which have been prospering in this country for a very long time. If we can depend upon the philanthropic spirit of the citizens of this country many such institutions will come into existence, whether Government extends its helping hand or not. My submission, therefore, would be that the compulsory registration may be done away with. You may make it a condition that those institutions only which are registered under the provisions of this Act may be entitled to governmental assistance, financial or otherwise. That is understandable, but to make every institution compulsorily registrable does not appeal to me.

There is one other point to which I would like to draw the attention of the House and it has not at all been considered. The main thing upon which the preservation, protection and improvement of the breed of cattle depends is the quality of grass and other fodder that is made available to it. Is there anything in the provisions of the Bill as to how the State Councils or the Council at the Centre will be competent to see that proper portion of land in every village or in every town is set apart for grazing? We have seen from day to day and from year to year that grassy areas of land are decreasing. Therefore, if this Council is to effectively function and also to attain

the object which it has in view the first and foremost condition should be that the Council at the Centre as also the State Councils should be competent to secure from the Local Government sufficient open grassy lands reserved for the purpose of the cattle. Until and unless this is done it is idle to talk about protection and preservation of cattle.

These are some of the few suggestions that I want to make; but I want to repeat once more that the first and foremost object of the Select Committee should be to enact certain provisions by which the slaughter of cattle may be absolutely prohibited in Part C States and any person violating such provision should be liable to be punished very heavily. Until this is done, to talk of cattle preservation, its protection and improvement is idle. I do not want to stand in the way of the progress of this enactment. I wish that it should be placed on the statute book, with the qualification and the suggestions I have made, as early as possible. With these remarks I support the provisions of the Bill.

4

On Punishment of Tax Evaders and Black Marketeers Bill*

The Bill that has been sponsored in this House by my hon. friend Prof. Shah aims at hanging by neck every tax-dodger or a black-marketeer. In all humility I would like to ask my hon. friend as to what punishment he prescribes for those persons who are responsible for creating conditions in which this evil of black-marketing has come into existence.

So far as this Bill is concerned, it only aims at enhancing the sentence raising it to transportation for life or depth. But it does not introduce a novel principle in the realm of law. There are laws, as has been pointed out by my hon. friend the Deputy-Speaker, which prescribe punishment by way of imprisonment for the commission of these offences. But what has been the regrettable history of the administration of these laws? You may turn the pages of history during the last three years and you will seldom find an instance in which a real black-marketeer has been brought to book. If the defect of law has been responsible for this omission, then of course we can say that the law must be tightened, must be made more rigorous. But the facts are that the administration has failed and failed miserably, to bring to book those who have been responsible for this black-marketing. Therefore, if this House is serious, the question that we have to tackle today, tomorrow or the day after is how and in what way the conditions that prevail are to be set right.

*Parliamentary Debates, 25 March, 1950 pp. 2128—2130.

I asked a very relevant question at the very beginning as to what punishment does the author of this Bill prescribe for persons who are responsible for bringing these conditions into existence. This is a legacy that we have inherited from our British masters. Prior to 1943 there were no control measures existing in India. It was for the first time in June 1943 that textile control was introduced by the Government of the day. And from September 1943 the entire export and import trade in foodgrains was taken over from the normal trade channels by the Government in its own hand. It is after these control measures came into existence that we began to hear about this evil of black-marketing. Prior to that perhaps very few of us had even heard the name 'black-marketing'. Therefor, not only those who commit this offence are the offenders but the real offenders are those who are responsible for creating these conditions and further, who are responsible for perpetuating these conditions. My conviction is that until and unless those conditions disappear from the scene, this offence cannot be set right. Whatever laws you may make whatever decrees you may introduce, they will be no answer at all for the elimination of this evil. This evil of black-marketing has caused immense hardship to Government by depriving it of its revenues. Not only that, it has led to a very regrettable thing-a thing which is much more regrettable than any other-i.e., the degeneration and demoralisation of the nation's morale. Therefore, we have to see that it is effectively checkmated and counteracted. I for one think that every Member of this House is responsbile directly or indirectly for its perpetuation, because every day we have been passing laws and introducing more and more controls without ensuring that those controls are administered on healthy lines. Therefore, in my humble opinion, the remedy lies not in the enactment of laws or making them more regorous, but in doing away with the control measures themselves from the public life of the country. After a good deal of consideration of every aspect of the question, I have come to the conclusion that in the larger interests of the nation, controls must go lock, stock and barrel. It is they who are responsible for the evils of black-marketing, corruption and so on.

Then, Sir, my hon. friend Mr. Tyagi said the other day that the hon. the Finance Minister's Budget is coloured with an urban bias. My complaint goes further. I say that not only the Budget proposals but even these control measures and their administration are coloured with an urban bias. After all, I ask you, for whom does the control on food exist today? If you look at the administration of food controls, the inevitable conclusion to which you reach is that they are for the exclusive benefit of the urban population, who number about 10 to 15 per cent of the total population. From the brochure circulated by the Ministry of Food, we find that the towns that are under rationing number about a 1000 and the population affected is about 129 million. Now, it is for the benefit of these 1000 towns that this elaborate machinery of control has been brought into existence at an enormous and colossal expenditure of public money, in addition to creating a general moral depravation and depravity among the people at large. The justification given for this from the Ministerial Benches is that there is a deficiency of food in the country and therefore the controls should continue. But the question is: Has anybody applied his mind to and seriously thought over this question? Has Government been able to gather reliable statistics about the total grain produced in the country? Government admits its failure to assess what is the total production of foodgrains in the country. If we are not even able to estimate that, I wonder how any control measure can be successful. How can it be successful until and unless we have information about the commodity, its source and its progress from the hands of the producer to the hands of the consumer? In fact, these controls were introduced by our British rulers on the analogy of controls in England. We have slavishly imitated what we inherited as a legacy from them, even though these controls are not suitable and proper for our country. My respectful submission is that, so far as the question of food control is concerned, it has been absolutely ineffective and has meant not only colossal loss of public money but also it has had a very bad effect on the morals of the people. It is only the rural population that has benefited by rationing. I want to point out the anomalous position that exists in my provinece in regard to its administration.

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I respectfully bow to your ruling, Sir, but I would like to close my remarks within a few minutes.* I was just going to point out the anomalous position to which these controls have brought us in my own province of Ajmer-Merwara.

The other day the hon. Minister of Agriculture and food admitted on the floor of the House that even in rural areas barely and gram of a very bad quality are being sold at 2 seers per rupee while imported wheat of a very good quality is being supplied in the urban ration shops at the rate of 3 seers and 4 chattaks per rupee. This instance shows that these controls exist only for the benefit of the urban population and out of this population, at least 60 percent is prepared to purchase commodities at whatever inflated prices they may be available. Therefore, my respectful submission is this: Unless and until the causes responsible for breeding this black-marketing are put an end to, black-marketing cannot cease to exist. Not only in the realm of food control but in those of textiles, cement and others, if we are to raise the moral level of the people, if we are to restore normal conditions, if we are to eliminate and do away with the evil of black-marketing, the sooner all control measure are put an end to the better it will be for us. The law has so far failed to bring into its clutches persons involved in black-marketing. The history of the administration of these controls is a regrettable chapter in the accomplishments of this Government. In my own province I know who are the victims of these laws. They are not those persons who make lakhs and lakhs of rupees-these people have got resources enough to be above the clutches of law. It is rather unfortunate that our public officers are keen more on bringing to book innocent and

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*Responding to observations made by the Hon. Speaker who said "Order, order, I may point out to the hon. Member that it will not be pertinent to enter into the details of the administration of food controls. His chief point is that controls are the cause of this evil and that point, I believe, he has sufficiently made out. He need not go into the details; otherwise, this will become a debate on "controls or no controls".

illiterate villagers on some technical infringement of laws, while the actual culprits go scot-free. These poor villagers are dragged to the courts of law where they remain on trial for months and years. Meanwhile the food-grains and other commodities which are taken possession of by the police from these villagers rot and by the time the man is convicted not a grain is left unspoilt. This is the regrettable manner in which control regulations are being administered.

Within the past four or five years the administrative machinery has considerably deteriorated. This fact was admitted even by the hon. Finance Minister the other day on the floor of this House, that the machinery has proved absolutely ineffective and is responsible to a certain degree for many of the evils that exist today. If that is the admission of the Government Benches and if they are not able to tone up the machinery, the only reasonable course that we could think of is to do away with these controls and restore the normal trade channel. This will naturally mean a death-blow to the black-market as such.

So far as the other offence of tax-evasion is concerned, I have full sympathy for the objects which the hon. Mover of this piece of legislation has in view. But there even the laws do exist. The real difficulty is that while the actual culprits are beyond its clutches, the innocent suffer. The practical remedy is to improve the administrative machinery and not make the law more stringent.

PART FOUR

Tributes

"Late Pandit M.B.L. Bhargava was one of the stalwart figures not only of Ajmer but of all Rajasthan. His contribution to the freedom movement and to the Parliament as well as public life is un-paralleled. He was very sharp and had an excellent memory. Because of these qualities, he rose to the height of a most outstanding leader of the Bar in the High Court of Rajasthan. He was a guiding spirit not only to the political workers but also to younger lawyers of Rajasthan. Even today, after such a long period of his demise, he is remembered with respect in the Bar community and public life of Rajasthan. I came into contact with him not only as a Congressman but also as a lawyer. I have learnt a lot from him by his down to earth approach and keeping the dignity of the profession of law in public life."

NAWAL KISHORE SHARMA,
Chairman,
Khadi & Village
Industries Commission.

"I and my colleagues in the Supreme Court were always struck by the phenomenal memory of Pandit Mukut Behari Lal Bhargava whom destiny had unkindly deprived of his vision totally. He used to argue his cases even more meticulously than lawyers gifted with full eyesight. His life is an example of how one can surmount seemingly insurmountable difficulties in life. He helped many Courts and Judges to find correct answers

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to many intricate problems of law. I pay my humble homage and tribute to his memory."

Y.V. CHANDRACHUD,
Former Chief Justice of India.

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".....Pandit Mukut Behari Lal Bhargavaji was my colleague both in the Constituent Assembly and then on in the provisional Parliament and also in the first elected Lok Sabha of which I was a member till 1958 when I became Chief Minister of Karnataka. I and every member of the Constituent Assembly and Parliament remember him as one of the most active, well informed, hard working, enlightened member of the Parliament. He was one of those who spoke on all the important subjects that come for consideration and decision during all that period with authority. He never spoke without studying the problems and spoke with facts and figures at his back. He was one of those members who had listen to with respect and sufficient consideration. He was never slip-shod.

He was one of the most important and well informed members. His dignity and courtesy impressed every body. I have a feeling that members of Parliament of any legislature should study his life and take him as a guide for themselves in their work as members of such bodies either now or in future....."

S. NIJALINGAPPA,
Member, Constituent Assembly.

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"Writing about Shri Mukut Behari Lal Bhargava my mind naturally goes back to the days of the Constituent Assembly, to my Association with the great leaders of the Congress party and to the distinguished members who had been elected from different provinces consisting of the cream of intellectual India.

One was overawed by this galaxy of stars who had set the pace of the freedom movement with their selfless sacrifices for the country and had achieved their objective. Among the Shri M.B.L. Bhargava stands out in my memory.

His contribution to the debates on the framing of the Constitution is very valuable. The Indian Constitution is considered to be one of the best inasmuch as it embodies the traditions and aspirations of the people. In this stupendous task contribution of Shri Bhargava is not negligible. His was a versatile personality. He took an active part in the debates and the proceedings of the Assembly are witness thereof. His contribution was relevant and backed by facts and figures. I was always impressed by his sincerity, ability and dedication. His fantastic photographic memory was also a source of wonderment. He could quote chapter and verse to augment his point which was remarkable, considering his unfortunate handicap with his eyesight. He had the courage of his conviction and argued his points with force and relevance. I am glad that the Lok Sabha Secretariat is bringing out a monogrpah on this great patriot and parliamentarian.

I pay my homage to his memory."

BEGUM AIZAZ RASUL,

Member, Constituent Assembly.

"I had the opportunity to serve with Shri Mukut Behari Lal Bhargava in the Constituent Assembly, Constituent Assembly (Legislative), Provisional Parliament and the First and the Second Lok Sabhas. Shri Bhargava had always taken keen interest in the discussions of various articles of the Constitution in the Congress Party meetings, Sessions of the Constituent Assembly and the Provisional Parliament and piloted various amendments. During the general discussion on the Budget as

also during the Zero Hour and when the House discussed Legislative proposals, he raised several issues of topical importance. He represented the centrally adminstered area of Ajmer in the Central Assembly, the Constituent Assembly, the Provisional Parliament and the Lok Sabha.

Pandit Bhargava took keen interest to safeguard the interests of the 'tenant-at-will' for security of their tenure as well as determining the share of crops grown by them in the fields of land owners. He was mainly responsible for persuading the Government to pilot the Ajmer Tenancy Bill for security of tenure and share of crops/fixation of payment of rent of the areas of land owners. I also had the chance to serve with Shri Mukut Behari Lal Bhargava on the Select Committee of Parliament on this Bill. Shri Bhargava Piloted many amendements to the existing Acts."

CHAUDHARI RANBIR SINGH,
Member, Constituent Assembly and Working President,
All India Freedom Fighters' Organisation.