Saturday
2nd April, 1949

THE CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE) DEBATES

(PART II—QUESTIONS AND ANSWERS)]

Official Report

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(19th March, 1949 to 5th April, 1949)

Fourth Session

OF THE

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

1949

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CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE) DEBATES

(PART II—PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS)

Saturday, 2nd April, 1949.

The Assembly met in the Assembly Chamber of the Council House at a Quarter to Eleven of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

ELECTION TO NATIONAL FOOD AND AGRICULTURE ORGANISATION LIAISON COMMITTEE AND TO STANDING COMMITTEE FOR ROADS

Mr. Speaker: I have to inform the Assembly that upto the time fixed for receiving nominations for the National Food and Agriculture Organisation Liaison Committee and the Standing Committee for Roads, 7 nominations in the case of the first and 12 nominations in the case of the second were received. As the number of candidates is equal to the number of vacancies in each of these committees, I declare the following members to be duly elected:

I. *National Food and Agriculture Liaison Committee.*—Dr. P. S. Deshmukh, Sardar Bhopinder Singh Man, Shri K. Hanumanthaiya, Prof. N. G. Ranga, Shri Satis Chandra Samanta, Prof. N. C. Laskar and Shri Kala Venkata Rao.

II. *Standing Committee for Roads.*—Shri S. Nijalingappa, Dr. V. Subramaniam, Shri B. N. Munavalli, Shri C. M. Poonacha, Shri Ram Chandra Upadhyaya, Shri Kusum Kant Jain, Shri Kishorimohan Tripathi, Srijut Kuladhar Chaliha, Sardar Hukam Singh, Shri Krishna Chandra Sharma, Mr. T. J. M. Wilson and Lala Raj Kunwar.

TAXATION LAWS AMENDMENT BILL

The Honourable Shri K. C. Neogy (Minister of Commerce): Sir, I move for leave to introduce a Bill further to amend the Indian Income-tax Act, 1922, the Indian Finance Act, 1942, the Excess Profits Tax Ordinance, 1943, the Indian Finance Act, 1946, the Business Profits Tax Act, 1947, and the Taxation on Income (Investigation Commission) Act, 1947.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Income-tax Act, 1922, the Indian Finance Act, 1942, the Excess Profits Tax Ordinance, 1943, the Indian Finance Act, 1946, the Business Profits Tax Act, 1947, and the Taxation on Income (Investigation Commission) Act, 1947."

The motion was adopted.

The Honourable Shri K. C. Neogy: Sir, I introduce the Bill.

INDIAN RAILWAYS (AMENDMENT) BILL

The Honourable Shri K. Santhanam (Minister of State for Railways and Transport): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Railways Act, 1890.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Railways Act, 1890."

The motion was adopted.

The Honourable Shri K. Santhanam: Sir, I introduce the Bill.

INFLUX FROM PAKISTAN (CONTROL) BILL

The Honourable Shri Mohan Lal Saksena (Minister of State for Relief and Rehabilitation): Sir, I beg to move for leave to introduce a Bill to control the admission into, and regulate the movements in, India of persons from Pakistan.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to control the admission into, and regulate the movements in, India of persons from Pakistan."

The motion was adopted.

The Honourable Shri Mohan Lal Saksena: Sir, I introduce the Bill.

HINDU CODE —*contd.*

Mr. Speaker: The House will proceed with the further consideration of the motion that the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration.

Shri Mahavir Tyagi (U.P.: General): May I know, Sir, till what time we will discuss this Bill, for there is some Government business and so we want to be sure as to how long the consideration of this Bill will take? Now filibustering is going on at this stage and all the Members are anxious to speak and they may not get any chance to speak for two or three days. I would like to know, Sir, as to how long they are going to discuss this Bill, for the present.

Mr. Speaker: It is difficult for me to say as to how long a particular Bill is going to be discussed. It much more depends upon the Members themselves. All I can say is that excepting perhaps one day, *i.e.*, the 4th, I think all the days in the next week are allotted to Government business; and it is a matter for Government to say as to what Bills they want to bring or not to bring before the House and it depends on the priority with which they look upon the different measures.

Shri Mahavir Tyagi: May I through you, Sir, request that the Government might be pleased to take over urgent business first and leave the consideration of this Bill to the end or let us know definitely as to which Bills are to be taken, so that we can come prepared for the next Bills. We are anxious to participate in the discussion of the other Bills.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, the question raised by my honourable friend, Mr. Mahavir Tyagi has really got some importance. I quite appreciate the observation made by you just now that in such a matter the House decides how long a Bill should go on and this necessarily means that when there are a sufficient number of speakers and they want to continue for a sufficiently long time, they may continue. This is what I understand to be meaning of that observation. Of course, I quite see that it is not in the hands of the Chair to say how many days are going to be allotted. At the same time, I think, the Chair would realize how difficult it is for Members who want really to speak on this motion and debate it fully that they know at

least if any more Bills are going to be taken up during this session. I was submitting yesterday at the very beginning when this motion was taken up that most of the Members had the impression that this Bill was not going to be taken up again in this session. As a matter of fact when a Bill of this importance and magnitude, was to be brought again for consideration, we expected that sufficient notice would be given to the Members in time. It was not done. The whole importance of my contention arises in this way that if we are to know that this Bill will be discussed and that it will continue only up to day, we can understand, but if on the other hand we are given to understand that additional days would be provided in this session, it becomes another matter. Members who want to speak for, or against it, would not be able to come and participate in the discussion. We started yesterday and many honourable Members had already left, for instance, Mr. K. M. Munshi came here to speak on this motion and he went away and there were many Members who wanted to speak one way or the other on this important Bill and if the House could get to know through you—it is for you to say—it is possible for you to do so—that some additional days are going to be provided, that will be really helpful; otherwise, we do not know where we stand with regard to this important Bill.

Mr. Speaker: I should like to know if the honourable the Law Minister is in a position to enlighten us.

The Honourable Dr. B. R. Ambedkar (Minister of Law): The only thing that I can say is that this Bill will be debated. What would be the next stage, I am quite unable to say, because the question of the arrangement of the business of the Government is entrusted to a Committee of the Government, which is called "the Priorities Committee". That Committee have assigned these days to this Bill. This Committee will be meeting in the afternoon and be taking its own decision. I am unable to say anything further than that.

Pandit Lakshmi Kanta Maitra: In view of this, I would submit respectfully to the Chair that the Chair has sufficient inherent powers to see that this procedure is not adopted with regard to this Bill unless sufficient notice is again given, to the honourable Members when this motion comes, it is certainly within your competence to say: "I am not going to allow this motion to come, because that prejudices the right of honourable Members to participate in this important debate." That the honourable Minister cannot make up his mind, is exactly my grievance from the very beginning about the way in which the consideration of this Bill is taken up from time to time during this session. This itself has been a subject of great adverse comment on my part as well as other honourable Members. Even today the honourable the Law Minister is not in a position to say if any other day is going to be or not going to be allotted for this important Bill. If that is so, I hope you will sternly turn down any proposal brought at the end of this week if a motion for consideration of the Bill is brought on a very short notice.

Mr. Speaker: Any way that question is at present hypothetical. We are going on with the Bill.

Pandit Mukut Bihari Lal Bhargava (Ajmer Merwara): It is obviously very unfair that the Government are not able to make up their mind even today. On 30th March you were pleased to ask the Leader of the House as to what the position was. A specific question was put by Mr. Maitra as to whether the Hindu Code was going to be taken up or not. No answer to that query was given by the Government Bench with the result that on the 31st, for the first time, we knew that the Bill was going to be taken up. Mr. Chandhu [illegible] wanted to participate in the debate left for Assam on the presumption that this Bill would not come before the House. It is therefore obviously unfair to the Members that it should be brought up in this fashion. The Chair has ample power to protect the rights of Members.

Seth Govind Das (C.P. and Berar: General): You will remember that on that date the Leader of the House announced that very probably we would be adjourning on the 7th April. I raised the question whether the Hindu Code Bill was going to be taken into consideration in this session or not and you, Sir, said that it was not your business to say anything in that matter and that it was for the Government to arrange their business for the House. Now, at this fag-end of the session, when many Members are absent, it is not proper to proceed with a controversial Bill of this nature. I would join with the Members who have just spoken and submit that the protection of the rights and privileges of the Members of this House is your responsibility and you have that right vested in you. Therefore I would request you to say to the Government that at this fag-end of the session and without giving sufficient notice to Members it is not proper to proceed with this Bill. I would request you at least to adjourn the debate on the consideration stage of the Bill this evening, so that this business may be taken up in the next Session of the Assembly, when we meet in the autumn.

Mr. Speaker: Just at present the question is a hypothetical one, because the Law Minister does not say that he proposes to continue the debate. The question as to when, if at all, the consideration motion is to be discussed further, (*Interruption*) depends, as he said, upon the decision of the priority Committee. I shall try my best to see that all equitable and reasonable demands of Members for debate are acceded to as far as it lies in my power in the House. On the question of the arrangement of Government business, I think, it is a bit too much to ask me to interfere. The Government are the best judges of priority of their business. As regards this particular Bill, I do not think anything further need come from them, in view of what is said in the House. I believe they are responsive to the feelings of Members. I do not think we need go any further into this matter. We may proceed with the motion under consideration.

Shri H. V. Kamath (C.P. and Berar: General): May I know from you, Sir, who has the last word on the arrangement of business here?

Mr. Speaker: So far as Government business is concerned, it is the Government. I have nothing to do with the arrangement of business so far as priority is concerned.

Seth Govind Das: The ultimate authority rests with you. They can bring any business they want to put before the House. But, after all, the ultimate authority is yourself.

Mr. Speaker: At present, it suits the honourable Members to vest it in me. I think that responsibility is too great for me. I am not acquainted with all the details and the needs of the Government administration. I do not think I can interfere with their discretion to adjust their business in matters of this kind. The best way is for honourable Members to let the Government feel the pressure of their opinion. Then the things will be adjusted. All I can do is to see that a reasonable debate takes place. From that point of view I shall certainly do what I can.

Seth Govind Das: We are requesting the Government through you.

Mr. Speaker: There are many other channels for Members to do so.

Shri Arun Chandra Guha (West Bengal: General): We should be informed now as to when the House is going to be adjourned. If this is not done we would find it difficult to make arrangements for our business.

Mr. Speaker: As regards that, the position was made clear by me the other day. I requested the honourable the Prime Minister to give the information and he said that this may go on for a day or two. It is not possible for him also to say definitely, because there may be some urgent measure which they might wish to put through, without stifling discussion. So that matter also rests with the Members. But I may say that we are not going to sit beyond the 9th April.

11 A.M.

Shri Arun Chandra Guha: In that case, urgent matters may be taken up first.

Mr. Speaker: That is a matter of opinion as to urgency.

Maulana Hasrat Mohani (U.P.: Muslim): To remove this difficulty of Dr. Ambedkar I would make a suggestion. I think that any legislative measure involving social reform should not be made part of official business. I could understand a Bill of this kind involving social reform being introduced by Shrimati Durgabai or Shrimati Renuka Ray. To thrust an official Bill of this nature on an unwilling public is absolutely unreasonable. I would therefore invite my honourable friend to take courage in both hands and, realising that discretion is the better part of valour, postpone consideration of this Bill and withdraw the Official Bill leaving it to be sponsored at some future date by an ordinary Member, who, in consultation with public opinion, may bring forward measures of this kind involving social reform.

Mr. Speaker: The honourable Member need not further argue the matter. It is enough he has made a suggestion.

Mr. Muhammad Ismail Khan (U.P.: Muslim): As the honourable Minister told the House, the priority for this Bill has to be determined by the Cabinet Committee. Surely we are entitled to know from him whether he is going to urge for priority for this Bill or not.

The Honourable Dr. B. R. Ambedkar: I do not wish to add anything. All that I want to say is that the Government has no intention of getting this Bill passed by a snap vote.

Mr. Speaker: Mr. Naziruddin will finish his speech now. I do not wish to impose a time limit on speeches. He has spoken the whole of yesterday and I believe had spoken for 48 minutes on the previous occasion. The time taken in all comes to 3 hours and 28 minutes, to be more exact. I am not measuring his speech by the length of time taken. What I would like him to do is to take into consideration the fact that the present is a general motion for taking the Bill into consideration. It will not, therefore, be either in order or proper to go into the details of every clause. The honourable Member's argument, as I understood it yesterday, is that there are some substantial changes made in the Bill and that, therefore, the measure has to be considered anew or that public opinion has to be consulted in the matter. For developing that argument he need not go into each and every clause of the Bill and suggest that every change made is a substantial change. He need only point out, by way of illustration, a few instances of really substantial changes made. I think that should be enough for the purpose of his argument at the present stage. When the Bill comes up for discussion clause by clause, he will have every facility to move any amendment he likes

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I am grateful to you for that suggestion. I dealt with substantial changes yesterday but today I shall confine myself to a few more substantial changes. *(Interruption).*

Mr. Speaker: There is one difficulty that I feel about interruptions. They distract attention from the original point and my hands are weakened in pulling up the speaker and bringing him up to the proper scope of relevancy in debate. If there are no interruptions, therefore, the matter will be shortened.

An Honourable Member: But it becomes very dull.

Mr. Speaker: Of course it gives relief from dullness but too much of it is dangerous for the House. Therefore let there be no interruptions or side remarks because they sidetrack the issue.

Mr. Nasiruddin Ahmad: I shall confine myself, Sir, to a few more substantial changes introduced by the Departmental Draft. I shall turn to part III of the original Bill and draw attention to sub-clause (2) of clause 126 of the Departmental Bill which corresponds to sub-clause (2) of clause 124 of the Final Bill. It is a new sub-clause which introduces a new principle, namely, that any transfer of property would not defeat the right of maintenance paid therefrom. In fact, maintenance has been made a statutory charge on the property. Whether good or bad, it is a new matter which has been introduced not by the Select Committee but by the Departmental Committee.

Then turning to part III-A of the original Bill which deals with succession, clauses 1 and 2 which are important substantive provisions have been entirely omitted in the Departmental Bill and of course also in the Final Bill. I will not deal with them in detail but leave them for consideration by the Honourable Minister.

Then coming to clause 131 of the Departmental Bill (clause 130 of the final Bill), sub-clause (1) which deals with maintenance is a new matter which introduces a very substantial change. Again clause 133 of the departmental Bill (clause 132 of the final Bill) lays down certain tests; they introduce an innovation of a very substantial nature. Part (b) of sub-clause (2) of this clause is an innovation which corresponds to clause 6(1) of the original Bill, part III-A.

Then parts (g) and (h) of sub-clause (1), part III-A in the original Bill are also important provisions which have been entirely omitted in the Departmental Bill and also in the final Bill. Again parts (g), (h) and (i) of clause 133(2) of the departmental Bill are very important and are entirely new.

In part III-A the proviso to sub-clause (1) of the clause 6 in the original Bill has been omitted in the Departmental Bill rather unceremoniously. This is omission of a very important matter.

Sub-clause (2) of clause 134 of the Departmental Bill (clause 133 of the final Bill) deals with marriage expenses of an unmarried daughter. This is a new provision which was not in the original Bill.

Then I come to clause 7 of part III-A of the original Bill dealing with the maintenance of a widow residing outside the family house. This has been omitted in the departmental Bill and also in the final Bill.

Therefore in part III-A of the original Bill, there are sins of omission and commission of an important character. I refer to them because I wish to rely not only on the individual changes made but also on the cumulative effect of those changes.

Then I come to part IV of the original Bill dealing with marriage and divorce, corresponding to Part II of the departmental and final Bills. I shall deal only with the salient points. Provisions about marriage have been entirely and radically changed and require some detailed consideration. With regard to sacramental marriage the form of that marriage prevalent in Hindu society is well known. The original Bill left those forms to be applicable according to custom and social practice. There was no provision in the original Bill for registration of a sacramental marriage as a condition of the validity of the marriage. I shall try to show that the Departmental Bill has introduced such changes. They may be unconscious but the change to me appears to be that no marriage will

be valid unless it is registered. Registration has not been made optional as in the case of Muslims, but in this case by the Departmental Bill the optional character of the old formalities have been interfered with and the validity has been made subject to registration: otherwise, as I shall try to show, the marriage would be invalid.

The original Bill, Part IV dealt with this subject. In clause 2 it was laid down that there shall be two forms of Hindu marriage, namely, the sacramental marriage and the civil marriage. Leaving aside the civil marriage, with which I am not at present concerned, "there shall be two forms of Hindu marriage—sacramental marriage and civil marriage". That is what was provided in the original Bill. The forms were left to the well-known custom and well-known requirements of Hindu marriage and provide nothing for registration. The House will be pleased to consider the corresponding provisions in the Departmental Bill. The original Bill merely said that the sacramental form of marriage will be one of the forms of marriage. Details were left to the discretion of the parties.

In Clause 6 of the Departmental Bill which also corresponds to Clause 6 of the final Bill, the following provision is made:

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

The original provision was that marriage might be performed in the sacramental form in the usual religious form well known to Hindu society, but in the departmental Bill it is said that no marriage shall be valid unless it is performed in accordance with this Part.

Let us consider the provisions of this Part. We come at once to another part of the Bill, namely, clause 6 of part IV of the original Bill corresponding to clause 9 of the departmental Bill as well as the final Bill. (*An Honourable Member*: 'Please note that Dr. Ambedkar is away.') Clause 9 deals with registration of sacramental marriage. In the original Bill it was stated:

"For the purpose of facilitating proof of sacramental marriage, rules may be prescribed for the entering of particulars relating to such marriages in such manner as may be prescribed in the Hindu Civil Marriage Certificate book kept under section 6 of this Chapter."

Babu Ramnarayan Singh (Bihar: General): On a point of information: may I know who is listening to the debate on behalf of the Government?

Mr. Speaker: There must be someone!

Shri L. Krishnaswami Bharathi (Madras: General): I am taking notes for him.

Mr. Naziruddin Ahmad: The Minister should, in courtsey, be here

Shri B. L. Sondhi (East Punjab: General): The Law Minister is there—just coming.

Mr. Naziruddin Ahmad: The original clause provided for rules made by the Government for the entering of particulars in a register for the purpose of facilitating proof: that is, it left the validity of marriage absolutely intact. It gave additional facility in the matter of proof that particulars of marriages might be registered in the Hindu Civil Marriage Certificate book and this could be provided by rules. This was only to facilitate proof. This was not a compulsory condition, nor any condition affecting the validity of the marriage. All that was laid down was a very usual rule, a very salutary rule, that particulars might be entered in a register and that might be prescribed in the rules. It would be only for the purposes of facilitating proof. It would not affect the validity

[Mr. Naziruddin Ahmad.]

of the marriage at all. In fact a marriage of which the particulars are not entered in this register would be perfectly valid, but registration would offer, or supply a ready-made method of proof of marriage, and a certified copy of the entry would be taken judicial notice of by a Court of law and much evidence would be dispensed with. But in the corresponding clause in the Departmental Bill, it is like this:

"For the purpose of facilitating the proof of any sacramental marriage, the Provincial Government may by rules provide (*and here the sting comes at the tail*)—

(a) That particulars relating to such marriages shall be entered in the Hindu Marriage Certificate book....."

In fact the compulsion is not yet complete, but only begins here.

Then, Sir, we come to clause (b) of the Departmental Bill. Sub-clause (3) of clause 6 of the original Bill says:

"The making of such an entry shall not be compulsory."

I shall ask you, Sir, to consider the corresponding language of the Departmental Bill. The original Bill—I shall repeat with your permission—is

"That the making of such an entry shall not be compulsory."

Shri Mahavir Tyagi: Does it mean that the married parties will go to the Registrar's House?

Mr. Naziruddin Ahmad: According to the original Bill, the making of such entries is not compulsory. That is absolutely clear. But let us consider the corresponding provision of the departmental Bill:

"The making of such entries shall be compulsory."

Shri Jaspat Roy Kapoor (U.P.: General): In which place?

Mr. Naziruddin Ahmad: I shall come to that later on. "Which place" is also mentioned. It is at very inconvenient places!

So the original law was that by rule particulars of marriages might be entered in a book for the purpose of facilitating proof, "but the entry shall not be compulsory". But in the revised clause in the departmental Bill, the particulars shall be entered and the making of the entries shall be compulsory in such cases.

And then, what is more, there is sub-clause (2) and clause 9 of the departmental Bill which reads:

"In making the rules under sub-section 1, the Provincial Government may provide that a contravention thereof shall be punishable with fine which may extend to Rs. 100/-."

The position is a little vague as to whether the compulsory character attaches to the registering officer or is addressed to the party. But more of this later on.

Shri Mahavir Tyagi: Which clause are you referring to?

Mr. Naziruddin Ahmad: Clause 9(2) of the Departmental Bill as well as to clause 9(2) of the final Bill. In fact it gives authority to the Provincial Government to impose a fine for not complying with it or even a vague suspicion that parties who fail to register or have them entered, will also come within the mischief of this provision. But the matter has not been left in doubt and it is clear later on.

Mr. Speaker: The validity of the marriage is not affected, in which case, where is the substantial change? It is only a matter of detail which, it would

be as well for the honourable Member to speak on, when we come to clause by clause consideration of the Bill.

Shri Mahavir Tyagi: It is a matter of importance, Sir. In that case it is a great change. The parties will have to be directed to the house of the Registrar instead of the House of the father-in-law.

Mr. Speaker: The scope of the present discussion is with reference to changes in the substantive law as proposed by the Rao Committee and as adopted by the Select Committee. A minor detail of registration is made compulsory. So far as validity of the marriage is concerned, it is not affected at all. I do not want any discussion on that. I do not say as to whether the change is desirable or not but for present purposes a discussion on that would be outside the scope.

Mr. Naziruddin Ahmad: I would like to refer to one or two sentences in that connection as well as on the final Bill. Clause 138—Power to make rules—(2) sub-clause (ii) reads:

"The cases and areas in which particulars of sacramental marriages shall be compulsorily entered, and the punishment for any contravention thereof;"

This provides for compulsory registration. I am coming to the question how it affects the marriage. (*An Honourable Member*: 'It is in the discretion of the provincial government.') It is in the discretion of the Provincial Government no doubt. But the Government is given a new power which it may enforce.

I come back again to clause 6 of the departmental Bill. It also corresponds to clause 6 of the final Bill.

"No marriage between Hindus shall be recognised as valid unless it is solemnised either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part."

According to the clause in the original Bill these formalities were not required. The "provisions of this Part" in the departmental Bill require compulsory registration of the marriage. In fact sacramental marriage and civil marriage are brought on a par with each other. In civil marriage of course registration is compulsory. The combined effect of the change of phraseology in clause 6 of the departmental Bill as well as the compulsory reqirement of registration would make it appear that a marriage which is not registered—of which particulars are not entered which is made compulsory under this clause—would be an invalid marriage. No marriage shall be valid unless it is done in accordance with this Part.

Shri L. Krishnaswami Bharathi: Where is it?

Mr. Naziruddin Ahmad: That is my interpretation which is submitted for the consideration of the House. In fact it may be farthest from the mind of the honourable Law Minister to effect this result. He made it quite clear in his speech that the provisions relating to marriage are not compulsory but rather optional. It may be that the effect was unintended. But whether intended or not, the effect is the same. No marriage shall be valid unless it is performed in accordance with this Part, which also carries the liability of a fine for an omission. However reluctant the House or even the author of the Bill may be to put this interpretation, it is yet a question of interpretation and it is not a question of sentiment. The point is whether this interpretation is valid. If that is so, it introduces a very important change. To provide, though indirectly that a marriage would be invalid unless it is registered would be a dangerous proposition and it would lead to wholesale breaches of the law. The registering officer may live miles away from parties living in inaccessible regions, and at this stage of the civilisation of our country, especially for the backward people, this provision would be absolutely tyrranical and meaningless.

Shri L. Krishnaswami Bharathi: If you would permit me, Sir.....

Mr. Speaker: Let there be no discussion on the merits of the argument.

Shri L. Krishnaswami Bharathi: Only for the purpose of clarification that I rise.

Mr. Speaker: If we enter into clarification and further discussion, it would be an unending speech. The point is that the honourable Member is putting his interpretation. I have drawn his attention to the fact that, it does not affect the validity of the marriage. If he wants still to persist in that line of argument, let him do so. That will cut short the speech.

Shri L. Krishnaswami Bharathi: If you would permit me, Sir, there is only one point which he may clarify. The clause begins with the words "For the purpose of facilitating the proof of any sacramental marriage....."

Mr. Speaker: That point is quite clear to my mind. I put it to him though not in that form. I pointed out to him that this does not affect the validity of the marriage at all. Still he thinks it does. How can we go on convincing him? Let him proceed now. That would be the shortest way of having his say before us. Otherwise we shall have to discuss with him every provision in respect of which, he is giving his inferences. When honourable Members are hearing his speech in silence, it does not mean that they are accepting his interpretation. He may proceed to the next point now.

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

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

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

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

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

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

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

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

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

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

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

Mr. Nazirudin Ahmad. All right, Sir. *(Interruption)*

Mr. Speaker: Let there be no asides.

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

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

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

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

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

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

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

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

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

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

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

[Mr. Naziruddin Ahmad]

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

We then come to the other matters in connection with this Bill. The question of inheritence is agitating the mind of the country for a long time. The position of the daughter is the most contentious provision of the Bill that I can think of. In fact, I was asked why it was that I was refusing to my Hindu sisters what I have given to my Muslim sisters. The reply is very simple. Under the Muslim Law, the daughter has been given a share. We are not permitted to question the wisdom of that Law; that Law has got to be taken along with various other circumstances, historical, social and others which justify that. There is a kind of justice which has been tolerated and accepted by the Muslim society for 1850 years. But our Hindu sisters have tolerated their lot for about three to four thousand years under a different system. A comparison between the two systems so far as the daughter's position is concerned, would not be quite relevant. In fact, the two systems of law approach the matter from different points of view and they depend upon different historical accidents. Under the Muslim Law, the system of inheritance was taken from the old Arabian customs. It arose out of obvious and inevitable circumstances. In Arabia there were no immovable properties, all was desert, and the properties consisted of movables. When a man died.....

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

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

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

An Honourable Member: Close your mouth.

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

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

the Arabs conquered the areas surrounding the Mediterranean difficulties arose because they acquired immovable property. It is a matter of history that they felt the difficulty of a large number of shareholders inheriting the property leading thus to disruption. Then it was that the system of *wakf*, which we now find today, was thought of. Some passages in the Holi Book were developed by Muslim divines and they tried to develop the law of *wakf*. That was how they wanted to counteract the evil effect of division. In India the law of *wakf* was further developed by Indian courts and especially by the Privy Council and this to a large extent thwarted the application of the *wakf* law in domestic purposes. It is well-known that Mr. Jinnah, in 1913, brought a Bill in the House and got an Act passed—the *wakf* Act—which recognised the validity of certain *wakfs* which were regular in practice among the Muslims. This was an attempt to counteract the evil effect of infinitesimal divisions. The Muslim approach to the division of property is entirely different. The outlook of a Muslim is individualistic. In fact, the infinitesimal divison induces in them separatist tendencies. Brothers do not live in the joint family for long; they quickly divide. We have seen a separatist tendency on a large scale in recent Indian history. So, the approach of a Muslim is individualistic whereas the approach of a Hindu is from the family point of view. The Hindu lives in a family. There the unit is the family and they approach the women's rights from the point of view of a family. The Muslim approach is different. In fact women in a Hindu family are not unequal to men, the question of inequality as has been pointed out does not really arise; they are equal to men in every way but each has a recognised part in the economy of the Hindu family. That is the way of approach of the question. Although I do not question the authority of this House to legislate on any matter, I question only the propriety of this House entering into this legislation without discussing and going into details of the system under which the Hindu civilisation has lived. The position of a Hindu widow should be considered from that angle and if on adequate consideration it appears that the system is rotten, it is for the Hindu society to change it. It is not for me to change it. It is up to me only to point out certain things which come to my mind as a Member of the Legislature; it is not my vote that will carry; the vote of the majority will carry. I have a duty to submit certain points as they appear to me. I submit therefore that the Hindu Law is not unjust to the female. It has done full justice to the female considering her as a part of the family system where she has a part to play. In fact, in this Legislature we have different parts to play. There is no question of inequality or discrimination. We have all parts to play. In these circumstances I submit that the position of the Hindu women has to be considered from this point of view. The division amongst Muslims has gone too far. How the share of a daughter leads to disruption of the family is worthy of consideration. As soon as a man dies, leaving sons and daughters, the daughters at once inherit their shares. They are married and in a majority of cases they are transported to different families. In fact, inter-marriage in Muslim law is a device to counteract infinitesimal division. There is again a provision that in case a person having a share transfers the property to an outsider, the original co-sharers have been given the right to re-purchase the share on payment of the price. But as every lawyer knows, a suit for pre-sumption is hedged in with so many legal difficulties that it hardly succeeds. The *Wakf* is another attempt to counteract this tendency. The share to a Muslim daughter has not conduced to the solidarity of the family property.

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

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

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

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

Shri Mahavir Tyagi: You are casting aspersions on women.

Mr. Nazirudding Ahmad: It is not casting aspersions. It is analysing their character. The sentimental nature of women makes them more attractive, more interesting and more loving. If women were as hard-hearted, as strong, as rugged, as we are, life would have been impossible. In fact, it is the beauty of feminine nature that they are so different from men. It is the union of two distinct types that makes life bearable and happy. So it is not by way of disparagement that I was making this remark.

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

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

Shri Mahavir Tyagi: What is your experience?

Mr. Speaker: Order, order.

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

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

An Honourable Member: Quite right.

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

Babu Ramnarayan Singh: More than that.

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

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

Mr. Speaker: Order, order.

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

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

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

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

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

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

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

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

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

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

Mr. Nazirudin Ahmad: Sir, This is an example from history. If a Hindu is prevented from marrying for the purpose of a son, if he thinks that a son is necessary, and if he believes his wife would not give him the son, then he would think of some evasion. He will in many cases enter into a morganatic marriage. Can you prevent a man from entering into a morganatic marriage or to commit a technical crime in the full religious belief that what he is doing is just and proper according to his own conscience? This would be interfering with sentiments of a people deeply immersed in religious thoughts and religious beliefs. In these exceptional cases therefore the matter should not be dealt with by legislation, but rather on public opinion. Polygamy is dwindling from within and the process must not be artificially hastened in order to create evasions. Absolute prohibition of polygamy is a defect and a practical difficulty in the way of the Bill. If a man requires, a second wife, what prevents him from crossing over to Pakistan? (*Shri Mahavir Tyagi*: 'What about a second husband?') The second husband is also prevalent in some places. Mr. Tyagi is well aware of this. Polygamy would be prohibited in India and you will refuse to recognise it, but the man must have a son and what prevents him from bringing the married wife—the second wife married in Pakistan— to his house and it may be that the first wife may be consenting. Would you then pass a law which is against deep-rooted sentiments and beliefs of the Hindus. There are serious matters to be considered. This is hardly a subject for drastic legislation going against the very principles, the fundamental ideas of the Hindus. The matter should be very carefully considered before we should indulge in a drastic law of this kind and then there is the provision of a penalty, legal punishment in case of a second marriage. I submit that we should not pass a law which would not be popular with our masses, which would inevitably lead to violations and evasions. We know the fate of the Sarda Act. The first effect of the Sarda Act was that many

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millions of infantile marriages were performed before the law would come into force. The first effect was to bring about the very mischief which it was the purpose of the law to prevent and then what is the story today. Supposing a man has a marriageable daughter, not up to the age standardized by the Sarda Act and suppose a suitable bridegroom is available, can you morally blame the father or the guardian if he contracts the marriage for the minor daughter? Would it be merely indefensible simply because it may offend against the theoretic legal sense or the political sense of the man? Current practices should not be made impossible all at once by law. Old practices are in consonance with the faiths and inclinations of the people. The Sarda Act has largely failed and public opinion is so strong in this respect that there is hardly any prosecution against the alleged violation of the Sarda Act today. In fact legislation had been imposed by way of amendment and there are some difficulties in the way of a complainant. The first difficulty is that he must deposit the costs, which will be forfeited in case he loses his case and other additional difficulties are put in the way. What has happened? Infantile marriages are still prevalent. Nobody supports infantile marriages, but it could not be stopped by criminal prosecutions or by force, unless it is supported and backed by popular sentiment. Amongst the upper educated classes infantile marriage is practically out of the question, but just look at the poor people. If unmarried girls of the poorer classes, not coming up to the marriageable age are to be left unmarried without the care and protection of a husband, it would not be a very safe thing to allow and it may be that many abuses and difficulties will arise if such girls are left without the protection of a husband. The result would be that if she is forced to wait till she attains the statutory age, a husband would not be readily available and she cannot be married readily, and this will lead to all sorts of abuses. I submit, Sir, that remembering the fate of the Sarda Act, we should also consider the idea of compulsory monogamy under all circumstances in all its rigour and without any reasonable exceptions. I think, Sir, the matter is one of serious practical consideration and not a matter of theories and slogans. I now come to the question of divorce. Divorce is not a panacea for all family unhappiness. There is hardly a man who does not have mis-understandings with his wife and there is hardly a family which does not suffer on this score. Life would be unbearable if the relation between husband and wife was all happiness. Such happiness would be no happiness. Unless happiness is punctuated by moments of unhappiness and quarrel, it will be no happiness. In fact it is these misunderstandings which are followed by re-union—*virah* and *milan* in our society—that conduces to happiness. So, misunderstandings are sometimes necessary. I am addressing these remarks to all experienced men. Only an imbecile would be happy all his life. If he is intelligent and has a personality there will be differences of opinion, but in the long run, the wife will prevail. Therefore if you leave the couple to live together for a time, misunderstandings will be blown away as the autumn clouds. I submit therefore that we should not hastily provide for divorce.

Now, the analogy of the Muslim custom is brought in. "A Muslim can divorce his wife, so, why should not the Hindu have the same right? A Christian can divorce his wife; why should not the Hindu do so too?" I may point out that the three systems are entirely different and differ radically in these matters. A Muslim is not free to divorce his wife for practical reasons. He has unrestricted right to divorce, but he has to find the necessary dower money which is usually far beyond his means, because even if it is worth only Rs. 10,000, his dower would be something like Rs. 50,000 or a lakh. It is expressly provided in the Muslim Marriage Law that dower is a check on the Muslim husband's unrestricted right of divorce. So there is a very effective practical check on every Muslim husband, however, dissatisfied he may

be with his wife, against divorcing his wife. In fact this is considered to be a sufficiently deterrent condition to prevent many bold husbands from attempting a divorce. If a Hindu husband is dissatisfied with his wife, we should allow some time for the dissatisfaction to blow away. If you widen the door and make divorce easy, the result will be the parties will rush to Court and benefit the very lawyers who are anathema to a section of the House. Those who have experience of divorce proceedings in Court know what sordid details are narraterd there. They are such as should not be heard by any decent man. Adultery is to be proved to the letter, otherwise divorce will not be allowed The unhappiness is so complete in divorced families that divorce is not a panacea for family unhappiness. If the Hindu wife or husband is given the right to rush to court, the effect will be that temporary misunderstandings which may be healed by lapse of time will result in life-long unhappiness. In attempting to remedy existing problems. you will only create many new problems.

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

If resort to Court is provided what will happen is that, the male will take advantage of this provision more than the female. It is sheer nonsense to suggest that an aggrieved woman would get relief in divorce proceedings, as it is very likely that she will be the victim herself. The husband will more often go to Court alleging this and that wrong mentioned in the Bill and get an *ex-parte* divorce. Those who know our society can imagine what possibility is there for a woman to go to Court and disprove the allegations made against her. Who will defend the case of a woman whom the husband wishes wantonly to discard? It is the man who will more often rush to Court. Then again, the tendency to rush to Court will be accentuated if the wife is barren and there is a desire to have a son by another marriage. Now, supposing a man gets divorce against his wife, what will happen to the woman? Where would she go? After being divorced, she would be without a husband, and without moral and physical means of livelihood? Who would be friend that woman? The sponsors of the Bill? I do not think they will come forward. Would she go to her brother? No. Has she not antagonised the brother by taking a share of the family property for the benefit of the husband who has discarded her? The result will be that her father's relations will be entirely apathetic to her sorrows. Then how will she maintain herself?

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

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

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

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

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

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

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

[Mr. Naziruddin Ahmad]

So a civilised European woman can stand on her own legs and her position is different from that of our women, not the advanced fashionable ones but poor unfriended women discarded by the husband and fathers' relations. It is not easy, as the Law Minister jocosely said, for a divorced woman to get a husband; even if she is willing, a suitable husband is not to be readily available. So her position would be extremely difficult and such women would be the worst victims of the system of divorce. Then allegations in Court would be too serious to be thought of. Proceedings in Court in such cases are sordid in the extreme and it would be impossible for us, in the present state of our society, to allow the husband and wife to rush to Court.

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

"Aja juddhe, hrishi sradhhe, prabhate megharambarah,
Dampati kalahaschaiba, babharambhe laghukriah."

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

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

Instead of divorce you should give them time. The question of divorce is not all one way traffic. It has got to be considered from every point of view. The honourable the Law Minister advanced a very novel argument that as 90 per cent. of the people are *Sudras* and these 90 per cent. of the people practise divorce, it is just meet and proper that the law of the majority should be made also applicable to the remaining 10 per cent. This is not legal logic. It is not acceptable. The Muslims are microscopic minority in India. Should that be a reason for converting all the Muslims into Hindus or imposing upon them the laws of the Hindus and to cremate their dead bodies, for example, according to the Hindu custom? Or take the other example. The Hindus are in a minority in Pakistan. Would the Hindus call it justice if the Muslim law is forced upon them—if according to the customs of the majority the Hindus are made to bury their dead? Therefore, the argument of the majority is nothing.

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

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

Pandit Lakshmi Kanta Maitra: That is sheer nonsense!

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

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

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

Babu Ramnarayan Singh: In some cases.

Mr. Nazirudddin Ahmad: Certainly. But that does not make it the rule of the 90 per cent *Sudras*. Some Assam Members whisper from behind that it is. I hope Assam grows tea and also divorce! But Bengal produces tea without divorce. I submit Sir, that the argument of the majority is based on a mistaken notion. The facts are not true. It may be that in Bombay it is very prevalent and for that reason the honourable the Law Minister might have been impressed with the applicability of the theory in other parts of India. Therefore, the assertion that 90 per cent of the people accept divorce is not based on facts, and even if it was true that should not be made applicable to those who do not observe that system. That argument would fail and should not be used to support the result. A system of straight divorce or an uniform divorce, through a uniform procedure and rule would produce hardship in those cases where a simple form of divorce is prevalent by custom, and would produce unhappiness and disruption in families where divorce is not prevalent. In these days of easy approach to the law Courts, it would be the wealthy classes that would seek the so-called advantages of this procedure rather than the poorer classes. Therefore, divorce, if it is to be provided, must be provided with the consent of the people. At any rate the second marriage may be permitted with the consent of the first wife under special circumstances. Polygamy is fast dying out and should not be stepped by legislation. This may lead to divorce proceedings, or a man may cross over to Pakistan or to Burma, or to Malaya or to other places and take a second wife and come back. So if society is not sufficiently advanced and educated and sufficiently alive to the need of monogamy and divorce, a provision of this nature would not be accepted by them and would lead to evasions in many cases. Court proceedings should not therefore be encouraged. Again, if divorce proceedings are frequent, it will lead to considerable amount of unhappiness.

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

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

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

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

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

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

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

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

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

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

Babu Ramnarayan Singh: No.

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

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

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

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

Mr. Nazirudding Ahmad: I do not dispute the authority of the House. We have the right to destroy the Hindu society or Muslim society and blend them into something new devoid of religion. That right is never for a moment in dispute. But the question is are the people behind this law?

Some Honourable Members: No, no.

Some other Honourable Members: Yes, yes.

Mr. Nazirudding Ahmad: I believe they are not behind the law, they are against it. (*An Honourable Member:* 'They are for it.') How do you know

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

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

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

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

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

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

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

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

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

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

Mr. Speaker: I think there is a quorum.

Mr. Naziruddin Ahmad: Sir, when we rose before Lunch I was dealing with the question as to whether it will be proper for this House to pass this legislation. With regard to the constitutional power of this House I have

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Nasiruddin Ahmad: Sir, I want to elaborate it.

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

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

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

Mr. Nasiruddin Ahmad: The point is that as soon as I began I was contradicted by Mr. Krishnaswami Bharathi.

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

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

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

Mr. Speaker: It is obvious.

Mr. Nasiruddin Ahmad: No, Sir, To Mr. Bharathi it is not obvious.

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

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

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

Mr. Nasiruddin Ahmad: You would be pleased, therefore, to consider that we have no moral authority to pass the law. In fact, the Government framed a Bill and then sent it out for circulation. I refer to appendix II at page 41 of the second Hindu Law Committee Report. "The Bill as framed by the Rau Committee was sent for circulation and the Bill was sent to a large number of public bodies and individuals of weight and authority and their opinion was sought". It is made absolutely clear in this notification dated 5th August 1944

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that the Hindu Law Committee intend to revise the draft in the light of public opinion as elicited by them in writing and orally. This is very important and should supply a key to unravelling the present matter. The Bill was submitted for public opinion and it was clearly stated therein that the Bill would be revised in accordance with public opinion. What was the public opinion? The public opinion at one stage of the matter is contained in the "Written Statement submitted to the Hindu Law Committee, volumes I and II". I believe this opinion has never been adequately considered by the Members of the House or it was never considered by many Members of the House. When these opinions were received they were analysed and then oral evidence was also invited and a large number of witnesses were examined. That is to be found in the "oral evidence tendered to the Hindu Law Committee, dated 1945". These volumes, if analysed and carefully read, would show that public opinion which was consulted was very preponderatingly against the Hindu Code. Therefore, it follows that the Hindu Law Committee proceeded to adhere to their own views and revised the Bill here and there not in accordance with public opinion, but in spite of it. The effect of this evidence has been carefully analysed in the dissentient note by Dr. D. N. Mitter, the ex-Judge of the Calcutta High Court, who was also a Member. In fact, he was written an elaborate minute of dissent. I do not wish to go over this matter, but he has analysed this opinion under different headings, namely whether we should have codification or not, whether the marriage law should be changed, whether there should be divorce and so forth. He has analysed the opinions and the evidence, for and against under each head, and I submit his report deserves careful consideration at the hands of the House. The opinions are again classified according to Provinces as according to subjects. With regard to the effect of the evidence, according to Dr. D. N. Mitter the opinion on each point is preponderatingly against the Bill for codification, for divorce proceedings and for other matters. The opinion of the public was directly against the codification. These opinions and evidence are preponderatingly against the principles of the Bill. The Hindu Law Committee Report is only a majority report. It was definitely opposed by Dr. D. N. Mitter but the other Members thought it fit to stick to their original Bill amended in slight respects here and there, not according to public opinion, but according to their own ideas. I therefore submit that the Bill has been framed in direct defiance of public opinion. That is the basis upon which my argument stands. Though Mr. Krishnaswami Bharathi said that the public opinion is behind the Bill, I venture to submit that public opinion is against it.

An Honourable Member: Question.

Mr. Tajamul Husain: No, not at all. It is for the Bill.

Mr. Naziruddin Ahmad: So far as the written opinion is concerned, it is definitely against the Bill.

I submit, therefore, that public opinion has not been properly consulted as a democratic Government ought to do. In fact, this Bill is a negation of democracy and it is conceived under circumstances which no longer prevail today. A full-fledged democracy is now in operation and public opinion should be taken into account and followed in giving effect to legislative proposals. I submit, therefore, that so far as written opinion goes it is against the Bill, but what about the unwritten opinion? We have a large number of protests lodged in your own office and we hear of proceedings of large number of meetings. In fact, we had meetings in the very heart of this city. The meetings were largely attended and many honourable Members and also the honourable Minister for Law were invited. Some Members attended but the Minister for law did not.

Babu Ramnarayan Singh: He did not have the courage to attend.

Mr. Naziruddin Ahmad: He did not think it necessary to attend, because it seems to me that public opinion is not the criterion or his guide so far as this Bill is concerned. In fact, Dr. D. N. Mitter gave a clear analysis of the opinion. The honourable Minister for Law said that he would quote an earlier writing of Dr. D. N. Mitter to contradict him.

The Honourable Dr. B. R. Ambedkar: What did the honourable Member say, I did not follow?

Mr. Naziruddin Ahmad: That he would quote an earlier writing of Dr. D. N. Mitter to contradict his present report. We have his earlier writing as well as his later writing and I have considered both.

The Honourable Dr. B. R. Ambedkar: His later writing I have not seen. What is it?

Mr. Naziruddin Ahmad: Later writing is in the report.

The Honourable Dr. B. R. Ambedkar: That you call later writing. I thought it was something after this.

Mr. Naziruddin Ahmad: The question is what was his earlier writing and what was his present writing and is there any change and if so what. He had long ago written a pamphlet.

The Honourable Dr. B. R. Ambedkar: A pamphlet?

Mr. Naziruddin Ahmad: A book.

The Honourable Dr. B. R. Ambedkar: I thought you said pamphlet just now.

Mr. Naziruddin Ahmad: Give it any name you like. I do not quarrel with the name.

The Honourable Dr. B. R. Ambedkar: How big is that book? Have you any idea?

Mr. Naziruddin Ahmad: You will have it in the Library.

The Honourable Dr. B. R. Ambedkar: You called it a pamphlet. How big is that pamphlet?

Mr. Naziruddin Ahmad: If I am to be cross-examined, I should be put in the witness box and I will then answer.

The Honourable Dr. B. R. Ambedkar: I should like to know that my friend has ascertained the facts before he refers to them. If it is a pamphlet I should be very much surprised. The book is a book of 700 pages, somewhere about that.

Mr. Naziruddin Ahmad: The most important thing is not the size, but the view expressed therein.

The Honourable Dr. B. R. Ambedkar: Yes, what was the view?

Mr. Naziruddin Ahmad: The view expressed therein was that the rights of Hindu women should be better safeguarded and given better rights. I cannot repeat everything to the honourable Minister because I do not like to trouble the House and I do not like to speak louder than what I am doing. In the present opinion he has opposed the Bill and the honourable Minister evidently had his earlier writing in view and that is taken advantage of by the majority Members. I submit that the reason for the change of opinion

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has been given by Dr. D. N. Mitter himself. If change of opinion is a crime, blind adherence to an opinion, although it is proved to be wrong, is a worse crime than change of opinion based on reason. Dr. Mitter clearly expressed an opinion in favour of giving more rights to women. I have read the passage in Appendix II that the Government gave an undertaking to the people that the Bill will be re-shaped in accordance with public opinion. That was the thing that troubled Dr. Mitter. In fact, he found that his individual opinion was far ahead of public opinion in India which was definitely against it. So he has referred to this passage in the notification declaring the intention of Government to change the law in accordance with public opinion. Dr. Mitter was faced with a volume of opinion against the Bill and he changed his opinion. This is a legislation which affects the whole country and it was this reason which induced him to go against the Bill, because this is the public opinion. There is no illogicality in giving up one's personal opinion in deference to public opinion. I believe the honourable Minister and other Miniaters too have their personal opinions, but they have to subordinate them for the collective good. We have often heard Ministers speaking against their personal conviction. This is neither improper nor wrong. It is perfectly natural. Here Dr. D. N. Mitter had accepted a position of great public responsibility with the express object of ascertaining public opinion and changing and re-shaping the Bill in accordance therewith. I ask: is there anything improper if Dr. D. N. Mitter changed his opinion? He accepted a job, and what was it? To ascertain public opinion, and public opinion was against the Bill. He himself was present when the evidence was taken and there is one passage in the report on oral evidence which is very significant which has been specifically referred to. When the Committee was in Lahore and was sitting...

The Honourable Dr. B. R. Ambedkar: They were greeted with black flags?

Mr. Naziruddin Ahmad: No black flags; something more. A large number of ladies, thousands—I do not remember the exact number—I do not wish to trouble the House with the exact number.

Mr. Speaker: What year was it in?

Mr. Naziruddin Ahmad: It was in 1945 in connection with this enquiry. They went to Lahore and a large number of ladies came and absolutely blocked the progress of evidence. They said, "We do not want it. It is not to our benefit. It is against our idea."

Babu Ramnarayan Singh: Hear, hear.

Mr. Naziruddin Ahmad: In fact, the situation was so grave, that this gentleman when he was faced with the sad spectacle of thousands of ladies opposing the Bill, he could not proceed and it was difficult to repress them and their sentiment and so further evidence was absolutely stopped. This is what he has referred to. If he is guilty of inconsistency, he is certainly to be credited with some amount of honesty.

Babu Ramnarayan Singh: Hear, hear.

Mr. Naziruddin Ahmad: Does consistency lie in sticking to one's opinion although it is proved wrong? This is inconsistency. This is doggedness. This is neither good nor fair. This gentleman when he found that not only male opinion but female opinion was absolutely against him, he said he was also against it. Would it be fair or proper on anybody's part to quote that stray personal opinion of his? If so, one could quote writings and speeches

of the honourable Minister himself against him. This would not be fair. Every writing and speech has to be taken in the context. It may often happen that we have to act in public capacity and therefore, for that purpose, we have to sink our personal opinion. So Dr. Mitter acted patriotically and courageously in giving up his personal opinion in deference to the opinion of the public. In this Dr. Mitter performed a patriotic and obvious duty, and no blame should be attached to it. On the other hand, the other respected Members, what did they do? I do not wish to be hard upon them, but they all of them, though they promised that the Bill would be considered in the light of public opinion, they stuck to their own opinion, and actually taunted Dr. Mitter for having changed his opinion. Is it to be, Sir, that we should never change our opinions? If that be so, then mankind would cease to be rational. We have got to change our opinions.

3 P.M.

Mr. Speaker: Order, order. May I tell the honourable Member that on each point he need not necessarily go into the general principles and all the details. He may just invite attention to the point and then go to the next point; because if he carries on like this—he has now gone on for nearly two days—there will be no end to this discussion. And I do not propose to allow him to go on in this manner. He must bring his remarks to a close within a reasonable time, and I think another fifteen minutes would be quite reasonable.

Mr. Nazirudin Ahmad: I bow down to your decision. I hope, Sir, that these fifteen minutes will be entirely mine.

Mr. Speaker: Yes, he may finish by 9-15.

Mr. Nazirudin Ahmad: Next I want to emphasise the fact that we are a democratic body. We are working as a democratic body. We cannot say that democracy is unfit for our society. It is democracy that has brought us into being. That democracy was sufficient to wrest power from the British Government. That democracy is sufficient to empower us to frame our Constitution. And I say that democracy would be intelligent and competent enough to understand its own interests in the matter of the Hindu Law. Therefore there should be no shirking, no by-passing, no flouting of public opinion. Where is the harm in ascertaining public opinion? In fact, the Bill, I submit, has been mutilated. It has been interpollated upon. I do not mean to say there has been dishonest interpollations, but honest interpollations, but they are not the less interpollations. There have been interpollations in the Bible—honest interpollations. There are great authorities pointing out that fact. So, I say, there are interpollations in the Bill. The Bill, however, was presented to the Select Committee with the guarantee that there was no serious change, and that some changes made had been noted by the Members. Yet, is it possible, or practicable, Sir, for any one unaided to note all the changes? In fact, all these changes, it is impossible to take note of. And therefore, the Select Committee was told, and they were asked to take it, that the Departmental Bill was merely a reproduction of the original Bill, and that no substantial changes had been made, and therefore, they failed to note and consider the changes. That is not their fault. In these circumstances, the Select Committee, although they tried their best, unconsciously, I submit, they must have omitted to note many important changes, on account of the guarantee. And then, Sir, if that is so, if there are so many changes, and when these changes are substantial, then the guarantee given by the majority of the Select Committee that the Bill was not so changed as to require re-publication is only the usual guarantee. They said that the Bill had not been so altered as to require, under Standing Order 41 (5), any re-publication and that the Bill be passed as amended by the Select Committee. This is only the usual stock certificate. I ask in all seriousness, is it contended, in the light of the disclosures of changes made,

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that the Bill has not been substantially altered? On the original Bill we have not got public opinion, and what public opinion we procured, was against it. We have, therefore, got to ascertain public opinion. And then, the Bill was sent to the various Provincial Governments for opinion. The opinions of the various Governments have not even been referred to in the House. They are collected and circulated to the Members. I shall, however, confine myself to the opinion of the Government of Bengal. I assert without fear of contradiction that in Bengal the opposition is the greatest. You propose to abolish the *Mitakshara* system of inheritance and do honour to Bengal by accepting their theory of family life. In Bengal you have the greatest objection.

An Honourable Member: Objection is from everywhere.

Mr. Naziruddin Ahmad: Of course, from everywhere there is objection, but the greatest objection is from Bengal. It is the most persistent, and so very authoritative. The whole of Bengal, including some educated and cultured ladies think that the Bill is not wanted there. In fact, many ladies like the wife of the late Sir Asutosh Mookerjee, the mother of Dr. Mookerjee, here, lady Rama Mookerjee, wife of Mr. B. N. Mookerjee and a host of other ladies have opposed this move.

Dr. Mono Mohan Das: Who are the other ladies please? Please name them also.

Mr. Naziruddin Ahmad: I have to respect the request of the Chair to finish soon. I cannot give my honourable friend preference over the request of the Chair. Sir, the names are there in the report. My honourable friend's request to name them shows that he has not read the report. It is a pity that this volume of opinion has not been read. It is a pity that the Department has not supplied the report to all. It is a pity that private Members have to undergo all the labour and expense to collect the information and to supply the House with the information. But the names are on record, and it is useless for any member to ask questions about facts which are on the record. It is a pity that I have got to refer to this matter.

Well, Sir, I was submitting that there is lot of opposition in Bengal. There are five High Court judges of the Calcutta High Court—and one of them now adorns the Federal Court—and they are against it. Their opinion is to be found in the Report also, and it is referred to in Dr. Mitter's report. Then there are ex-Judges of the Calcutta High Court. One of them is Mr. N. C. Chatterjee, and he is now a Judge of the High Court, and he was against it. The Hindu Mahasabha was then under the Presidentship of Dr. Shyama Prasad Mookerjee and it opposed the Bill, evidently, with the consent of the President, Dr. Mookerjee on a major matter like this. And then there is Dr. R. B. Paul, a distinguished jurist of continental fame, and he has opposed it. Their opinions are before us. In fact, in the face of all this opinion in Bengal, I am surprised that a Member from Bengal should have asked for names.

I submit, therefore, Sir, that the Bill should go out to the public for eliciting public opinion. If Hindu opinion is against it, why should you thrust upon it a law which is not wanted by them?

An Honourable Member: It is dictatorship.

Mr. Naziruddin Ahmad: Yea, it is sheer dictatorship. There is the fear that if it is sent to the public before the elections, possibly it will lead to complications. But do you know what complications will come up if you pass it before the elections? The illiterate people will get furious. This Bill will dislocate their lives. It is not easy for them to change their lives all at once

under the dictator's command. Even in Russia, Lenin did not go so quickly or remorselessly as we seem to be going here, in utter disregard of public opinion. There is in Russia a desire and a pretence to respect public opinion. But here there is no such thing. It is sheer dictatorship born of fear that if the Bill goes to the public it will be rejected. I find it is asserted that the public are in favour of it. If so, why not the public arm you with the authority to pass the law? Sir, it is injurious to the Hindus in general; it is injurious to the ladies in the larger interests and it is injurious to the public at large, and it is no use forcing your opinion upon an unwilling public. Had it not been a matter of personal interest any one is entitled to enforce his opinion, but having come here as the Minister of Law in a democratic Government and basing their authority on public opinion, is it fair and proper for them to flout that public opinion and to bypass it, to circumvent it or avoid it? It is a devious method, a circuitous course which is not warranted by any system of democratic Government. Why should you not go to the people if the law is favoured by them? Are the people so backward in their ideas that they will not be able to determine what is good or bad for them? The question is not what is good in the abstract, but what is good in the circumstances, and that depends on local conditions. There are certain practices which are considered to be good and there are others which are not and you make everybody uniform; you are trying to make all the people uniform. The honourable Minister for Law should try to make everybody as intelligent and as forceful as he is. Why should you stop at inequality; inequality is not bad. It is nature that there should be inequality in diversity. India is a big continent; it is composed of various provinces which are bigger than the continental countries and it has developed according to its own genius and each province has a distinct culture of its own and why should you by one stroke of the pen remove all this and make the law the same? In fact the great Hindu lawgivers, they were extremely...

The Honourable Dr. B. R. Ambedkar: This is only a peroration and not an argument.

Mr. Nazirudding Ahmad: They had tolerance and they did not enforce their law by force. A study of *Manu Smriti* will show that he never enforced his law. He said that the law should be enforced subject to the custom of the locality. That will be found by any one who has read it and therefore, the Hindu law-givers did not like the law should be uniform. Their method of propagation of their law and their civilization was not by force, but rather by persuasion and they allowed free scope—I speak with authority, having read the whole thing; they allowed their law to spread on their own merit, not by their force. Local custom plays not only an important part now, but played an important part in the time of Manu and that is the reason why law is different today. It is an organic method according to local circumstances that leads to this difference of opinion. In fact differences are not bad. It is not a small country; it is a big country with all the attributes of a continent and this diversity as a matter of fact should not be done away with without adequate and careful thought.

Sir, Mr. Kamath compared the present Bill to a new *Smriti*. Dr. Ambedkar's 138th *Smriti*. I think this is not a *smriti* at all. the *smriti* proceeds from the *srutis*. There is a pretence to agree with the principles of these *srutis*. This is a Bill which is not a *smriti*, but a new *Veda*. (*Pandit Lakshmi Kanta Maitra*: 'It is *vismriti*!') It is *Vismriti i.e.*, forgetfulness of the past. All sacred laws and customs, rules, laws, decisions, principles of the Privy Council are brushed aside by one stroke of the pen by Dr. Ambedkar himself in defiance of the report of the Rau Committee. Everything is gone. It is *Vismriti* as Pandit Maitra with good humour suggests. It is *vismriti*—absolute forgetfulness.

[Mr. Naziruddin Ahmad]

It is a new *Veda*. There are four *Vedas*, the *Sama Veda*, *Rig Veda*, the *Yajur Veda* and *Atharva Veda*. I think the new *Veda* should be called *Dr. Amba Veda* and this is the fifth *veda* in utter defiance and disregard of all the four *Vedas* which it supersedes. Sir, I thank you.

Pandit Mukut Bihari Lal Bhargava: Mr. Speaker, Sir, we have been discussing the Hindu Code Bill from yesterday. We had discussed it in February also. Before I proceed to discuss the merits of this measure, which is admittedly of a highly controversial nature, which aims at the utter demolition of the structure of Hindu society, I would like to put on record my emphatic protest against the way in which the Government is pursuing this measure of vital importance, a matter of life and death to the Hindu Society. It is well known that this Bill was rushed through in the legislature almost on the last day, that is, on the 5th of April 1948, when it was not discussed even to the extent that a very ordinary measure is usually discussed in this House. Further, in this session, we find that instead of giving consistent consideration to this matter the Government on the plea of want of time due to the Budget session, wishes to rush this Bill through this House. I would ask respectfully, though humbly, is it fair to the House that a measure of this vital importance, an equal of which, I submit, has never been on the anvil of this legislature since its inception should be rushed through in this manner? However, it is for the Government to decide and I feel it my duty to sound a note of warning to the Government that it should pause and consider as to what is the haste and hurry about this matter, and why in preference to a number of very important and emergent measures, this Bill is being rushed through. I would ask what will happen to the Hindu Society if the Hindu society could survive the onslaught of centuries of foreign aggression and foreign rule? Will it die out of existence if this measure is not brought on the statute book? I submit, Sir, this unusual haste and hurry is due to the fact which was hinted by my learned friend Mr. Naziruddin Ahmad, that my honourable friend, the Law Minister is now sure that the public opinion of Hindus is behind the measure. I take courage even to submit, Sir, that the weight of public opinion is against the measure. What is the criterion to judge whether the public opinion is in favour of this measure or against it? The only criterion that can possibly be applied to is: What is the weight of 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 predominently against every section of this measure. Consequently, Sir, without any fresh sounding of public opinion, it would be presumptuous on the part of any person, including the Law Minister, to claim that this measure has the support of public opinion in the country.

The question arises where is the necessity and what is the utility of the codification of Hindu law? Who demands the codification of Hindu law? We know, codification is essential only in two conditions. If on a particular point there is a serious conflict of judicial opinion, it becomes essential for the le 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 Thehaut 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 up to the present time. I would submit that it will be a vain effort to codify the Hindu law. It will be futile to

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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 *smritis* on the *Vedas* and we know the *Rig Veda* is the oldest book in the world. Even Vigneshwar and Jimuta Vahana, the learned authors of the two main treatises which have held sway in India, did not attempt to codify the Hindu law or create new law for society; they only based their commentaries upon the *smritis*. 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 shrouded 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.

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

Even in regard to the law of succession, in cases where the rule of primogeniture exists by custom or in case of grants or *inams* they have said that the rules of succession as laid down in this measure would not apply. Similarly in clause 7 although marriage between *sapindas* has been prohibited, it is said that it will be subject to local custom and so allowed where it prevails by custom. So the ghost of uniformity which haunts the draftsman of this measure is still there, and the socalled 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 cannnot 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 inheritence—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 betwen the brother and sister, between the husband and the wife and between the children and their father. The very fundamentals of Hindu society are sought to be demolished by this law. It is a question of vital concern and there must be a plebiscite on it or a referendum to find out whether public opinion in the country is in favour of this measure or against it.

I was submitting that there was no necessity for the codification of Hindu Law. The question then arises whether the uniformity that is sought to be achieved by the enactment of this law will be achieved if it is brought into force? What is our experience of the statutory law? The Government of India in the year 1923 appointed a Civil Justice Committee and that Committee after going through the various statutes made a recommendation that the Transfer of Property Act, the Contract Act, and the Law of Evidence should be modified and their revision should be taken in hand by the Legislature at an early stage. Has the Legislature found time for it? What is the result? The result is that the law is being administered in accordance with the provisions, which according to the authority itself, has outlived the utility for which they brought it into existence. That will be the condition if the Hindu Code is brought on the Statute Book and is made a rigid code upon which the rights of the people will depend. The Hindu law will lose its vitality, its elasticity, its adaptability to the prevailing conditions and will be reduced to immobile rigidity. May I know whether the object of reducing conflicts and of fighting differences of opinion will be achieved by the codification of Hindu Law? I dare to suggest it will not end our experience of the various pieces of legislation leads one to support my conclusion.

Take for instance, the Hindu Law Remarriage Act which was enacted in 1871. Now, Sir, it is a very simple piece of legislation but has there been a unanimity of opinion in respect of the construction of the various provisions of that Act?

Shrimati G. Durgabai (Madras: General): Are you opposing the Widow Marriage Act also?

Pandit Mukut Bihari Lal Bhargava: I hope my friend will have the patience to hear me. We must learn tolerance and patience for opposite opinions. My point was that mere bringing in of an enactment does not lead to uniformity or to the resolution of a conflict of opinion. Even in the interpretation and the construction of the provisions of this Hindu Widow Remarriage Act, of 1872, we find that there is a serious conflict of opinion between different High Courts about the construction of section 2. The question arises whether a woman who remarries according to customary law loses her rights in the property of her husband. This is the point, and we have the opinion of the Allahabad High Court and Oudh Chief Courts to the effect that merely because she remarries according to custom she does not lose her right in her previous husband's property. The other High Court has taken the other view. Similarly, in this Act there has been a serious conflict of opinion upon the interpretation of the simple word "sister". Some High Courts say that the word "sister" does not include a "half sister"; while the Nagpur Chief Court, after an elaborate consideration of this word came to the conclusion that it is included. My submission is that in view of the above, the difficulty that exists today in the construction of the Hindu Law will not come to an end by the fact that the Hindu Code Bill is there.

Shri L. Krishnaswami Bharathi: Do you mean that the conflict should be permitted to continue?

Pandit Mukut Bihari Lal Bhargava: I say that even if this Bill becomes an Act, the conflict will be there and it will be open to the High Court to interpret its different provisions in a different way. The divergent opinion and the divergent points with regard to the Hindu Law will not be resolved because it will be open to the High Courts and to the Supreme Court to give their construction on any particular provision and the conflict is bound to arise as our experience of the previous legislation shows. My respectful submission is that it is a vain and futile attempt to codify the Hindu Law and any attempt in that direction is bound to deprive Hindu Law of its mobility, its elasticity and its vitality, which by no stretch of imagination is advisable in the present circumstances.

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My next point is a very important one. How did the present legislation originate and did the circumstances in which it originated justify its being pursued any further? I would respectfully invite your attention that in the year 1941 the Hindu Law Committee was appointed and it considered the question of the codification of Hindu Law by compartments and two Bills were prepared by this Committee. One was the Bill concerning the Intestate Succession of Hindus and the second was the law relating to Marriage. When these two Bills came before the Legislature there was a joint meeting of the two legislatures (at that time our Legislature was of a bi-cameral character) and it was decided that it would be better if the Hindu Law was enacted as a whole rather than by compartments, and with this object in view the present Rau Committee came into existence.

Now, Sir, when a lady Member addressed the House— of course a zealous enthusiast in favour of this piece of legislation—she said that this piece of legislation had been before the country for a number of years—say for 10 years, and the Rau Committee has examined thousands of witnesses and has had an extensive tour of the country. I respectfully submit that there was little truth in the declaration made by the lady because let us examine what was the quantum of evidence that was before the Committee. And what was the weight of that little quantum of evidence? The Rau Committee which came into existence on the 20th January 1944 drafted a Bill which was circulated to selected and distinguished lawyers for opinion. After their opinions had been received the Committee decided that the draft which they had originally prepared should be circulated throughout the country. The Bill was translated into Indian languages and about 6,000 copies were distributed. Opinions were invited on the 5th August 1944 and the opinions were to be submitted by the 31st December 1944. After the opinions had been received the Committee toured the country. I would like the House to note the extensiveness of the tour undertaken by this Committee. It visited the leading towns and cities of the provinces and as far as I remember it is not more than a dozen—Allahabad, Bombay, Calcutta, Poona, Patna, Lahore and others. This was the extensive tour of the Committee. What is the population of these few leading towns and cities as compared to the total mass of population of the country? Can the tour undertaken by this Committee for the purpose of examination of witnesses in these cities by any means give an indication of the real feeling of the 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.

Mr. Deputy Speaker: A widow is a simultaneous heir today under the existing law.

Shri L. Krishnaswami Bharathi: Even that he is opposing now. Perhaps he wants it to be repealed.

Pandit Mukut Bihari Lal Bhargava: For the introduction of simultaneous heirship of daughter with son the witnesses number only 78 and the number of those against was 215. Regarding conversion of widow's limited estate as a female heir into an absolute estate the opinions for were 49 and against 107. In case of divorce opinions for were 112 and against 119. In case of adoption and the changes that are introduced opinions for were 96 and against 98. On other points the opinions against change were overwhelmingly larger than for it. Where is the justification, I ask, for pursuing this legislation?

Some Honourable Members: No justification.

Pandit Mukut Bihari Lal Bhargava: It is claimed by a number of Members of this House that public opinion is overwhelmingly in favour of this piece of legislation.

Shrimati G. Durgabai: What about monogamy?

Pandit Mukut Bihari Lal Bhargava: I will come to that also at the proper stage. My submission is that if this is a democratic legislature, if this legislature claims to legislate in consonance with the predominent volume of public opinion in the country, the only course for it is to throw out this piece of legislation, because whatever public opinion there was in the country distinctly points out that it is against it. I am sorry I have not got with me the particular newspaper in which the opinion given by the Law Minister was published. It was a few days before we commenced the consideration of this measure in February and he took his stand not upon the quantum of evidence in his favour, nor upon the public opinion in his favour but upon its quality. That was an open admission by no other than the Law Minister himself that the weight of public opinion so far as number was concerned was against him. If it is a fact that a few individuals, however distinguished they may be, because they wish this legislation to be thrust upon the country, it cannot be accepted. The only criterion of public opinion is the public opinion taken by the Rau Committee. There is absolutely no other criterion upon which it is open to any Member of the House to say that public opinion is in favour of this piece of legislation and not against it. Similarly we are receiving a number of representations from different bodies.....

Babu Ramnarayan Singh: Daily.

Pandit Mukut Bihari Lal Bhargava: . . . from different distinguished high courts and other civil judges also, from Bar associations in different parts of the country. As far as I have been able to go through the opinions very few persons, I find, favour the enactment of this piece of legislation and public opinion is overwhelmingly against it.

The next point is this. Even assuming that public opinion is not so far of a decisive character where is the necessity of pursuing this legislation in the present legislature? As has already been pointed out, and I will not repeat the argument, but I would respectfully submit that the present legislature is to frame the Constitution as also to legislate on emergent matters about which legislation is absolutely essential. It can by no stretch of imagination be asserted that the Hindu Code Bill is a piece of legislation that the Government should not pursue this piece of legislation in the teeth of public opposition in the country.

4 P.M.

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

Shri A. Karunakara Menon (Madras: General): That is the reason why our friend Mr. Naziruddin Ahmad is opposing it.

Pandit Mukut Bihari Lal Bhargava: Of course this remark cannot apply to me. I feel as keenly as the learned member on it. Now, Sir, the main question is about the Second Part of this piece of legislation under the head Marriage and Divorce. These are incorporated in 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 incorporation 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 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 1923. Civil marriage as envisaged by that piece of legislation must continue. But it should not find any place whatsoever in the Hindu Code. I want to ask why should civil marriage find a place in the Hindu Code. Is it in consonance with any *smriti*? I ask this question because you claim that there is nothing revolutionary, nothing radical in this measure, and that in fact everything is just in accordance with Hindu conception, ideology and ideals. It is a preposterous claim which I must refute. My submission is that the incorporation of a provision like clause 10 in this Bill, which envisages marriage of a civil type, is absolutely unknown and foreign to Hindu ideals. Previously I have asserted that this form of sacramental marriage is only a 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

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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 the 90 or 95 per cent of the Hindu society amongst whom you say divorce already prevails, because according to the provisions of the present Bill it will be incumbent upon each party to the marriage, before it can resort to divorce, to go for the dissolution of marriage before a competent court of law. As has been pointed out by one of the gentlemen who wrote a dissenting note to this Select Committee 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 intermixed and inter-mingled with his religious conceptions and religion that it is impossible to separate the two.

Shri H. V. Kamath: Is the honourable Minister for Law resting or meditating?

The Honourable Dr. B. R. Ambedkar: I am hearing the honourable Member.

Pandit Mukut Bihari Lal Bhargava: I was submitting that adoption in Hindu law rests upon religious belief which says that it is essential for the salvation of the soul of a departed man that he should have a son who may be able to give him oblations so as to make him attain *moksha*. So if you are going to legislate about adoption, you must keep in mind the underlying conception. Otherwise, you eliminate it. If you keep it, you keep the spirit underlying the doctrine of adoption. (*An Honourable Member*: 'What is the spirit?') What are the criteria you have fixed in this Bill for validity of adoption? While the Hindu law says that the eldest and the only son cannot be taken in adoption, instead of retaining that very salient principle, you want to reverse it and say that even the eldest and the only son can be adopted. (*An Honourable Member*: 'It is unfair.')

Babu Ramnarayan Singh: It is due to ignorance.

Pandit Mukut Bihari Lal Bhargava: It cuts at the very root of the conception of adoption, because according to Hindu law there must be the eldest or the only son to attend to the oblations for the departed natural father.

Similarly, what are the qualifications you have laid down in this Bill for a boy to be taken in adoption? The three conditions laid down are that his age must be below 15, he must not be married and he must be a 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-established 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. We should have restored it to its previous vigour. That has not been done. I have not heard a word from the honourable the Law Minister pointing out any fatal defects that existed in the joint family system. His only point is that true characteristics have been shown off by case-law and therefore, the institution should be put an end to. I say it is a counsel of despair. That is a view which, at least I for myself cannot support. To me this joint family institution is an institution of which any nation in the world can well be proud of. It is an institution, Sir, which anticipated the socialistic and communistic form of society, centuries before our time. It is an institution, Sir, where even the invalid and the disabled members of the family have equal right to the corpus of the family. It is an institution which.....

Srijut Kuladhar Chaliha (Assam: General): It is not prevalent in Bengal.

Pandit Mukut Bihari Lal Bhargava: Bengal, as far as my meagre knowledge goes is partly governed by *Mitakshara* and partly by the *Dayabhaga* system.

An Honourable Member: No, all by *Dayabhaga* system.

Pandit Mukut Bihari Lal Bhargava: Therefore, Sir, my point was that the axe of legislation should not have been applied by the learned Law Minister to cut at the very root of the joint family tree, if it does not rest on such firm and solid foundations as it did at the time of our ancients. Legislation should have been undertaken to protect it. In the time of the British, because we were subjected to foreign rule, and they were not at all interested in keeping in tact our time—honoured institutions. In fact, they had contempt for them. When our own national government has come into power, is it too much to expect that they should attempt to revive and restore this time-honoured institution to its previous glory rather than destroy it. I submit, Sir, by this Bill, the Hindu Joint Family is being shattered to pieces. What the Rau Committee proposed was not so fraught with danger as what is proposed in the provisions of this Bill. I invite attention to clauses 86 and 87 of the present Bill. The Rau Committee in clauses 1 and 2 of Part III-A only laid down that on the demise of a coparcenar in the family, the right in the property will not devolve by survivorship but will be by succession. That is intended to keep intact the coparcenary for at least one generation. Even that was not tolerated or liked by the present Select Committee and some of its members, including the Law Minister, with the result that what sections 86 and 87 lay down is that there will be automatic disruption of every joint family existing in India, simultaneous with the enforcement of this Act.

Shri L. Krishnaswami Bharathi: There is difference between joint family and joint property.

Pandit Mukut Bihari Lal Bhargava: I am coming to that.

Pandit Lakshmi Kanta Maitra: They are trying to put you off the rails. You go on, please.

Pandit Mukut Bihari Lal Bhargava: The Bill provides in clauses 86 and 87 that no court of law will take cognizance of any claim on the basis of birth, on the day this Bill comes into force, and further, that every joint family will be deemed to have disrupted so that joint tenancy would be converted into tenancy in common, simultaneous with this legislation. But I ask, why do you want this? Is there any uncertainty in the law to-day, in the existing Hindu Joint Family law? I respectfully submit there is none. Everybody knows what is meant by coparcenary and what are the incidents of coparcenary property. Why do you want it to be partitioned? My respectful submission is that this is against what was provided even by the Rau Committee. And public opinion, scanty as it was, was taken not upon the Bill as it exists 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.....

Shri B. N. Munavalli (Bombay States): Are there no disadvantages?

Pandit Mukut Bihari Lal Bhargava: Of course, there are disadvantages, if everybody wants to go on living in a selfish way, entirely for oneself, without any regard to their relatives. But if you look at society in the way in which the Smritis wanted us to, we should renounce something for others also, for the other members also, to sacrifice something to make the family, a Joint Family then there is no disadvantage. There is every advantage and no disadvantage. My submission is that it cannot possibly be accepted by every Hindu Family.

One of my friends here reminded me that *Mitakshara* is not governing Bengal and Assam. But Sir, you must keep the whole country before you and.....

Pandit Lakshmi Kanta Maitra: The joint family is also there.

Pandit Mukut Bihari Lal Bhargava: You are dealing with a population of 300 millions—of 30 crores—and a population that is extending from Kashmir to Cape Comorin, a population that extends from Gujrat to the farthest end of the country. And you want to disrupt the status of 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 decrepit, if it is dilapidated, if it is, as one of the Members said, in such a condition that we need not even shed tears about it, let it die a natural death. Why should you apply the axe of destruction and bring about its end?

Then Sir, I proceed to the question of inheritance. Now, here I have got the greatest grievance. As my friend Mr. Naziruddin Ahmad said, tho 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 submission is that all the rules of Succession that you have laid down in the provisions of the Bill if they are applied to the agricultural property in my province—and I can speak with some knowledge of my own province and the people inhabiting my province—I submit the law will be obeyed more in infringement than otherwise, because the rules of succession that you have laid down are so contrary to the established usage and custom of the people, that they will not accept them as a rule governing them, even at the risk of their lives. What are the rules of succession that you have incorporated in this Part VII Chapter 2 and Schedule VII. Are they in accordance with the accepted principles of Hindu law either as propounded by *Mitakshara* or by *Dayabhaga* and where is the indication of it? What is the basis you have taken for inheritance? You say it is 'natural love and affection'. So far as propinquity 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

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shraddhas to their parents. This is the fundamental capacity which has to be taken into any law of inheritance. Of course, the view was that we are not going to care for Hindu Law; that is a different matter; then delete the word 'Hindu' from there, I have no objection, but if you are to incorporate the fundamentals of Hindu Law, the first thing that you have to take into consideration in the principles of inheritance, is the capacity and the liability of the descendants to offer *shraddhas* to their ancestors, and this is the basis of the *Dayabhaga*.

The Honourable Dr. B. R. Ambedkar: All of them can offer *shradda* for you and get the property.

Pandit Mukut Bihari Lal Bhargava: What is the reason for the promulgation of this novel Rule of succession? Brother and brother's son has been relegated to a very, very inferior position. Brother and brother's son comes after daughter's daughter, daughter's son, son's daughter. Is it in accordance with the accepted principles of Hindu Law? Is it likely to bring peace to the family (*Many voices*: 'No, no.') Will it not disrupt the family? Will it not create perpetual disturbance, discord in the members of the family? This is inconceivable. According to the Hindu society even today, though it has been the subject of outrage for centuries, even today there is love and affection between brother and brother. When I make certain observations, I keep the agricultural population in view. You go to any village and you will find that 9 out of the 10 families live jointly. The brother is living with brother. He is not separate and as soon as you give the right of inheritance to daughter's daughter, to daughter's son in preference to the brother or the brother's son my respectful submission is that the society will not tolerate or even if it tolerates, the peace and quiet that exists today will disappear in no time. Therefore, you have to be very wise before laying any novel rules of succession so contrary, so repugnant to the accepted principles of Hindu law.

Now, I come, Sir to the doctrine of bringing daughter in the category of simultaneous heir with son.

The Honourable Dr. B. R. Ambedkar: I thought he had said something about it. No elaboration is needed.

Pandit Mukut Bihari Lal Bhargava: Now, Sir, it has been argued that the daughter had a specific share in the inheritance of her father according to the scriptures and the reliance is placed upon Manu and Yajnavalkya, but my cursory knowledge of these Hindu law texts is that whatever share is allotted is in the case of an unmarried daughter and we have no objection at all, even today to allot any share to an unmarried daughter. The question arises even today, what is the position? Can anybody deny that? Not one daughter among thousands remains unmarried. The daughter is given, according to the status of the family, the best education and is treated on the same footing as the sons. When her marriage takes place she is given a dowry according to the status of the family. On marriage her relationship to the brothers is not cut off. As far as my experience goes, she is invited for every function in the family and on occasions of marriage in her parent's family a quota is assigned to her according to custom. Can anyone say that resort to a court of law will bring peace and 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 particular 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, whatever law you make must be suited to the conditions and not in violation of them. If you make a law in violation of these conditions, the society will go to pieces.

Now, what is the percentage of property owners in Hindu society today? It is a very relevant question because, according to the existing custom not only the father has the moral obligation to arrange for the marriage of his daughter, but even the brother, whether he inherits any property or not, thinks it his moral duty to arrange for the marriage of his sister in the absence of his father.

Shrimati G. Durgabai: Do you think he would not discharge his moral duty if he allows his sister a share?

Pandit Mukut Bihari Lal Bhargava: The honourable Member is talking of a share, while I am talking of a family without property. What will become of the sister in such a family? You may go to any village or town. You will find cases where the father is dead and the unmarried sister is living with her brother. This brother thinks it his moral duty to arrange for the marriage of his sister and he even borrows money for this purpose. Unless and until he has discharged that sacred trust he never thinks of himself.

Mr. Deputy Speaker: Is the honourable Member likely to finish soon?

Pandit Mukut Bihari Lal Bhargava: I require one hour more, Sir.

Mr. Deputy Speaker: Then the House stands adjourned.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday, the 4th April, 1949.