

Thursday, 1st April, 1943

COUNCIL OF STATE DEBATES

(OFFICIAL REPORT)

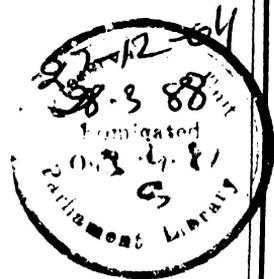
VOLUME I, 1943

(15th February to 3rd April, 1943)

THIRTEENTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1943



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI
1943

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COUNCIL OF STATE

Thursday, 1st April, 1943.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the President in the Chair.

SHORT NOTICE QUESTION AND ANSWER.

REPRESENTATION OF MUSLIMS AND OTHER MINORITIES IN THE POSTS AND AIR DEPARTMENT, ETC.

147. THE HONOURABLE MR. HOSSAIN IMAM : (a) Will Government be prepared to appoint an Officer on Special Duty in the Posts and Air Department to initiate the action to be taken to implement the assurance given by the Honourable the Leader of the House the other day regarding the representation of the Muslims and the Minorities in the Departments under his charge ?

(b) In view of the importance of the question will Government consider sympathetically the appointment of a Muslim Officer to this post ?

THE HONOURABLE SIR MAHOMED USMAN : (a) No.

(b) Does not arise.

THE HONOURABLE MR. HOSSAIN IMAM : May we know, Sir, how do the Government propose to supplement it ?

THE HONOURABLE SIR MAHOMED USMAN : The officers have already begun to tackle this question.

THE HONOURABLE MR. HOSSAIN IMAM : Who is the officer dealing with this matter ?

THE HONOURABLE SIR MAHOMED USMAN : The Secretary of the Department and other officers.

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : In pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the following Bills which were passed by the Legislative Assembly at its meetings held on the 30th and 31st March, 1943 :—

A Bill further to amend the Indian Army Act, 1911 and the Indian Air Force Act, 1932 ; and

A Bill further to amend the Trade Marks Act, 1940.

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House) : May I suggest, Sir, that these Bills be taken up for consideration on Saturday next ?

THE HONOURABLE THE PRESIDENT : Yes, I propose also that they be taken up on Saturday next. That would be the last day of the present session and I think all the members will agree to it.

(Members indicated their assent.)

THE HONOURABLE THE PRESIDENT : They will be taken up on that day.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL : Sir, a message has been received from the Secretary of the Legislative Assembly. The message runs as follows :—

"I am directed to inform the Council of State that the following Motion was passed in the Legislative Assembly at its meeting held on Tuesday, the 30th March, 1943, and to request the concurrence of the Council of State in the said Motion :—

'That this Assembly do recommend to the Council of State that the Bill to amend and codify the Hindu Law relating to intestate succession be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 18 members.'

HINDU CODE, PART I.

(INTESTATE SUCCESSION BILL.)

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official) : Sir, I beg to move the following :—

"That this Council do concur in the Resolution passed in the Legislative Assembly recommending that the Bill to amend and codify the Hindu Law relating to Intestate Succession be committed to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of 18 members."

Sir, it has fallen to me, a non-Hindu, to move this Motion. Sir, there are advantages as well as disadvantages inherent in this position. The disadvantages are that I cannot share the sentimental background of the community as fully and

[Mr. Shavax A. Lal.]

as completely as a member of the community might have done, but, on the other hand, as the advantages are that I can bring to bear an impartial mind upon the subject and view the provisions of the Bill in their true perspective uninfluenced by any prejudice or pre-conceived notions.

Sir, I have carefully gone through the provisions of the Bill and I have no hesitation in recommending to the House that the Bill deserves to be referred to a Joint Committee. At this stage we are not concerned with the details of the Bill on which there may be honest differences of opinion. The Joint Committee can be trusted, Sir, to make any change in the details of the Bill which it thinks fit and proper.

Sir, in my humble opinion, there can be no two opinions about the necessity of codifying the Hindu law. In the Seventies of the last Century the famous author of *A Treatise on Hindu Law*—I refer to John Mayne—said with some justification that Hindu law was in a state of arrested progress in which no voices were heard unless they came from the tomb. No one, I submit, could enthuse over this state of things. Society can never remain static and no law can claim to be immutable. As an illustrious Law Member said in 1879 in connection with the codification of another branch of law :—

“ If the legislature does not legislate the courts of justice will have to legislate, for indeed legislation is a process which perpetually goes on of some one kind or another wherever there is a civilised Government and it cannot be stopped, but legislation by Indian judges has all the drawbacks of judicial legislation elsewhere and a great many more. As in other countries, it is legislation by a legislature which from the nature of the case is debarred from steadily keeping in view a standard of general expediency. As in other countries, it is haphazard, inordinately dilatory and inordinately expensive, the cost of it falling almost exclusively on the litigants ”.

In other words, Sir, if the legislatures shirk their duty and the courts are compelled to legislate in order to bring the law into line with existing conditions, the result would from the community's point of view be far from happy.

Sir, one reason why legislatures in British India have been reluctant to legislate on laws affecting the various communities is that emphasis has always been laid on the condition that there should be unanimity in the community before the legislature could make any changes in the law affecting it. This insistence on unanimity is, in my opinion, tantamount to prohibition of legislation in any shape. Take, for instance, the Bill for the Protection of Women, which was once introduced by our worthy President in his capacity as member of the Imperial Legislative Council. Incidentally, that shows that he was then, as now, a valiant champion of the weak and the helpless, but what happened to the Bill ? It was not passed by the Legislature because certain Hindu pandits of Benares opposed it though it was supported by influential Hindu newspapers. Unanimous support of any Bill by the community concerned is an absolute impossibility.

In introducing this Bill, Sir, Government have not taken any precipitate action. Being faced with a number of attempts made by members of the Legislature for piecemeal legislation, which itself is indicative of the restlessness of the community for bringing the law into line with the requirements of modern times, Government considered, and, I submit, rightly considered, it necessary to have the question examined by a committee of experts, particularly in view of the confusion created by well-meaning but rather amateurish legislation by private members. The Committee has taken great pains in examining the subject very fully after ascertaining the opinions of persons who are in a position to speak with authority on the subject, and has with admirable clarity and precision formulated proposals which are embodied in this Bill.

Sir, one of the criticisms levelled against the Committee is that it has tried to usurp the place of Manu and other Hindu lawgivers of the past. Knowing Sir B. N. Rau and other members of the Committee as I do—one of them happened to be my own professor—I can assure the House that they would be the last persons to arrogate to themselves the role of Manu or of any other lawgiver. Sir, what they have done is this. They have evolved order out of chaos, and have, in doing so, always kept steadfastly in view the basic principles of Hindu law. Sir, I am not without hope that the future generations of these very critics would one day look back with gratitude to the achievements of the Rau Committee and of the legislators who had the courage and the vision to implement its recommendations.

Sir, I move.

THE HONOURABLE THE PRESIDENT : I may mention to the Honourable Members that this is a Motion asking this House to concur in the Resolution passed in the Assembly that the Bill be referred to a joint select committee. The Bill itself is not before the House just now. As the Honourable the Mover rightly pointed out, at present we are considering the principle of the Bill. Only the principle of the Bill is to be discussed at this stage—whether you want this Bill or not. The details of the Bill can be gone into by the Select Committee and the Bill modified or accepted in its present form and then brought before the House. After the Bill comes back, all Honourable Members will have abundant opportunities of speaking on the Bill. Therefore, I request Honourable Members to confine their energies at present only to the principle of the Bill. This being a Motion, the ordinary time for non-official members is 15 minutes for each member.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar : Non-Muhammadian) : I hope, Sir, in discussing the principles of the Bill, you will allow us very briefly to touch one or two sections which embody the principles of the Bill. The Mover of the Motion has paid a well deserved compliment to the Rau Committee, and I wish to echo everything that he has said with regard to the monumental work which the Rau Committee has done. And I wish to say this not only on my own behalf, but on behalf of every member of this Council—I think I have the concurrence of all of them—and also on behalf of the Hindu community—

AN HONOURABLE MEMBER : Question.

ANOTHER HONOURABLE MEMBER : What about Bengal ?

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : You may criticise the provisions of the Bill, but I do not think that even Bengal can be unmindful of the labours of the Committee and the great work which the Committee has done. I know one member of the Committee and he is Mr. Ghorepure. If he is not an erudite Sanskrit scholar and if he is not a stern orthodox Hindu, no one is.

Sir, I do not think there is any need for taking an alarmist view of the Bill before us. It does not propose any such drastic changes as may be wholly or vitally antagonistic or repugnant to the essential concepts of Hindu inheritance. Assimilation and elimination are the two essential conditions of life and in a dynamic world no society can afford to remain static except at the cost of its gradual but sure annihilation.

Sir, no one can dispute that there can emerge any real freedom to any one, man or woman, unless there is economic independence of some appreciable value. Howsoever ethereal and edifying may be one's philosophy, he or she must have feet of clay to stand independently on this earth. But even in this respect what does the woman seek ? It is best to put it in the words used in the Explanatory Note itself which is appended to the Bill. These words are that the general opinion even among women, judging from the answers received to the questionnaire issued by the Hindu Law Committee, appears to be that the daughter's share should be half that of a son.

I find that this Bill, in fact, touches a very small portion of Hindu property. The chief virtue of this Bill, which some people may call its weakness, is that it is merely a good pointer in the proper direction and nothing else. It tries to regulate the succession to heritable property only, that is to say, property that passes from the intestate owner after his death to his heirs by inheritance and not by survivorship. Of course, all properties of Hindus governed by the *Dayabhag* school are heritable properties ; but in respect of them also all the rules of intestate succession which this Bill provides can be over-ridden by means of a will. Any owner of property can put this whole Bill out of action by means of a will if he does not like the mode of succession as provided in the Bill, by making a testamentary disposition such as can legally take effect.

This Bill does not touch the ancestral property of a Hindu governed by *Mitakshara* law. The Bill is clear on this point. Ancestral property under *Mitakshara* law is not heritable property, and is obtained not by inheritance but by survivorship.

This Bill will not touch agricultural land unless the provinces decide that it should do so, and it does not touch impartible estates, that is, the estates which descend to a single heir by custom or by any other enactments. Thus, I find that the Bill has a very limited scope or field of operation. The Bill safeguards the interest of an undivided coparcener in a *Mitakshara* joint family—a position which may have been reversed if the Deshmukh Act had been put on the Statute-book.

[Rai Bahadur Sri Narain Mahtha.]

Sir, my first reaction after reading the Bill was that the widowed daughter-in-law had received an unfair deal, but after a more careful consideration of the situation that this Bill will create, I have reached the conclusion that what the Bill provides for now is a position much happier and securer for her. I am not satisfied, however, with section 7 (b), which deals with divided and undivided sons. I think in this respect the Bill does great injustice to the Hindu family as a whole which is the unit of Hindu society. Why should there be this partiality for a son who has already taken his share and gone out of the family unit? This is creating an injustice between one male successor and another and not remedying an injustice between one male successor and a female successor. The only argument which the explanatory note gives in this connection is that the present proposal has been adopted because it will be the simplest rule. We cannot agree to sacrifice equity at the altar of simplicity. I confess I am rather confused with regard to what appears in paragraph 6 of the second Memorandum and what appears as explanation to clause 5 (5) in the explanatory note. I would wish to have some enlightenment in this respect. Now or at a later stage.

I am glad that the Honourable the Law Member does not want to hurry with the Bill as he said in another place the other day. Nor, I hope, does the Government want to take sides either with the orthodox or the other point of view which I may describe as the liberal or the reformers' point of view. I am glad that the Honourable the Law Member has given the assurance that he will be prepared to examine some witnesses also before the Select Committee.

I believe that if a woman were asked as to what part of the earth she would choose as her birthplace, she would in many cases say that she would not like to be born at all. The reason for this is her economic dependence. Generally she has to find a bread winner for herself. Every society has provided a solution which it considered may be the best possible solution to this problem of finding a breadwinner for her. In Western countries, where the system of marriage is marriage by courtship, it devolves on the woman herself to do this task as well as she can. In India the task of finding a suitable husband for the daughter, or the sister, is performed mostly by her parents or by her brother. Every system has its own advantages and disadvantages and, therefore, there is always room and necessity for vigilance on the part of Government and the reformers, who want to move with the current of time to see that the lot of the woman is made more and more bearable economically. She suffers from some natural handicaps which in this work-a-day world put her at a disadvantage as compared to men in order to make an honest living for herself. In India education amongst women is at a far lower ebb than amongst men and her difficulties are correspondingly greater. Through the involuntary pressure caused by interchange of ideas and intermingling of races the woman in a Hindu home is much better looked after and has a much better status in the family today than what I think she may have had 20 or 30 years ago. In the Hindu scriptures the woman is worshipped in all her three forms—daughter, sister, and mother—and perhaps, I am not incorrect if I venture to say that it was in the Hindu mind that the concept of God in the form of a woman first took shape, I mean deities like “Durga,” “Lakshmi,” “Saraswati” and “Kali”. It is to me a matter, therefore, of the greatest repentance and shame to find that of all societies, the Hindu society should have failed to give to the Hindu woman the same degree and extent of literacy as to the men—howsoever scanty even this may be—and not to have placed her on a better social and economic footing and given her better economic recognition.

Whereas I wish fully to support the main principles underlying the Bill, I have to say that I am not fully satisfied with the poor and scanty provisions made. But, in a Bill of this kind individual opinions need not count very much. It is, therefore, that I want to warn the Government that I do not think much can be gained by thrusting a legislation even of this extremely moderate kind on Hindu society against the desire of the members of the society if it is found that the society is unwilling to have it. It is not yet clearly known as to what extent those who constitute the bulk of the society are in favour of the Bill. It is not enough to know what the intelligentsia wants. The Bill deals with masses of men and masses of women who are

ignorant and who know that women in general may themselves feel that the abolition of the limited estate in her case may, more often than not, lead to her exploitation at the hands of the unscrupulous people she may have to deal with.

Therefore, Sir, what I want to suggest is that it is best always to follow a course of watchful adaptation and development in the matter of social reforms. I do not by any means wish to indicate that the Bill is in my personal opinion revolutionary in character or that I personally fear that it would vitally disturb the foundations of Hindu society or materially change its structure ; but, what I would like to impress on the Government is that a Bill of this character at a time when most of the newspapers in India are not functioning has naturally been unable to attract full public attention. The Opinions that the Government have collected are very valuable indeed and will remain to be of immense value for all time to come, but all these Opinions are mostly from Government officials, lawyers and judges. These Opinions would have been quite sufficient if we were going to amend the Indian Penal Code. But, when a social legislation, which for the first time is going to give recognition to the daughter and daughter's daughter is going to be passed, one should have liked to see the display of better public enthusiasm than has been noticed. It is not possible in many parts of India today even to hold public meetings. One would have wished to see at big public gatherings resolutions passed in support of or against the Bill but nothing of this kind has happened. Then I find that the Bill, even if it is passed into an Act, is going to come into force not earlier than January, 1946: This date of enforcement has been suggested for three reasons :—

(1) To give Governors' provinces sufficient time to pass complementary legislation in respect of agricultural land ;

(2) In order to give the Hindu community sufficient time to adjust itself to the proposed changes ; and

(3) In order to give the Central Legislature sufficient time to codify other branches of Hindu law, so that there may be an entire Hindu Code in operation from the 1st of January, 1946.

Here I would like to remind the Government that in most provinces of India there are no legislatures functioning and one does not know whether this stalemate is going to perpetuate itself. I am highly apprehensive. I would suggest to Government, therefore, that this Bill when it emerges out of the Select Committee should be discussed in both the Houses of the Legislature and then be placed on the Statute-book merely as an enabling Act in order to achieve the three things mentioned above. This proposal, I respectfully submit, can in no way be considered to be a dilatory proposal. It is one that would work in the best interests of the community and prove to be of much better assistance to a legislation of this kind. While I make this suggestion I repeat that I subscribe to the main principle of the Bill. My objections are to some of the details but I must make it clear that for one, on account of some of the reasons I have mentioned above, would like to keep an open mind which in my opinion every member should keep until the last date and I would not commit myself to anything, but all the same I shall today vote for reference of the Bill to a Select Committee and emphasise again and again that the best thing to do in connection with this Bill is, in the first instance, to place it, if and when passed into an Act, on the Statute-book merely as an enabling measure for the time being and about the end of 1945 to take into consideration the question of its enforcement.

THE HONOURABLE KUMAR NRIPENDRA NARAYAN SINHA (West Bengal : Non-Muhammadan) : Mr. President, the Committee was appointed only to remove the doubts raised by the Deshmukh Act. The Committee has gone far beyond that and has taken up the question of codifying the whole of Hindu law. This is an unwarranted extension and the approval of the Legislature was not sought for the adoption of this policy. The Government ought to have first approached the Legislature, if they intended to create such a radical change in their well settled policy of non-interference.

The present world-wide conflagration has taken out the breath of every one out of his body. Every one is anxious deeply over his every-day affairs. People are not able to secure food to eat and clothes to wear. In this state of affairs it is impossible for them to calmly deliberate over matters of such deep importance as would be reorienting the whole social structure and would leave their permanent effect for all the time to come.

[Kumar Nripendra Narayan Sinha.]

Sir, we have examples of two Codes ; the Swiss Code and the German Code. These Codes lay down the Law of Nations which are small when compared with India; they are regulating the social life of comparatively fewer people, yet in one case it took more than 20 years to finish the work, in the other it took 50 years. The Swiss Legislature knew that it had not the requisite competency, so the Swiss nation first proceeded to amend the constitution of the Legislature suitably. No such thing is ever hinted at here. It is taken for granted that this enactment is just similar to any other minor measure and it is being attempted to be thrust on us with all the haste possible.

The well settled policy of the Government for the past years was based on the principle of complete non-interference in social matters. Sir, I refer to the famous Proclamation of the Queen Empress of 1858. In the Report of the Joint Parliamentary Committee on Indian Reforms says that it will be possible for the reformed Legislatures to deal with the problem of social legislation in an adequate way, because only in the reformed Constitution such Legislatures will be more representative in their character. The present Central Legislature is not a reformed one. The constituencies are old while the electors are the same. There is no change since 1920. How would this Legislature, constituted as it is in the old Government of India Act, be adequately and sufficiently representative for taking a piece of social legislation of such a vital nature ? Social legislation in the case of Hindus is altogether different from social legislation elsewhere. In the case of Hindus social legislation is legislation of religious matters, as all matters of social regulation are dependent upon religious practices, rites and ritual. Interference in any subject of social nature certainly means interference with deep religious beliefs ; so such interference would be resented by the generality of the Hindus. The publication of the Bills in the official Gazette for eliciting public opinion is a faulty procedure. The official Gazettes are read by a few officials only. It is not read by private individuals, even possessing high social position, let alone the generality of the public. On account of the scarcity of paper experienced by newspapers and other periodicals throughout the country for the whole of last year, none of them would take up a discussion of such vital questions. These days the only questions of public interest which are being discussed in the papers are the progress of the war and the internal situation and immediate problems arising out of these, such as the food and clothes situation, etc. So the only possible way in opening the eyes of the public on this important matter was completely closed. Still it is surprising in the extreme for us to hear from the Government that the Bills were widely circulated. The unpardonable haste of the Government convinces us that the Government wants to exploit this opportunity for aiming a hit in the back of the vast Hindu majority.

The Hindus have never admitted the competency and the authority of the Legislature to enact a Hindu Code. If a comprehensive Hindu Code were to be enacted, all religious matters affecting private life of millions of Hindus shall have to be touched and included in the future Code. *Upanayana, Brahmacharya, Shraddha, Asaucha, Pratyashchitya*, etc., all these subjects are the very kernel of the life of the Hindus. Social regulations of Hindus in the topics of positive law is based entirely on the religious practices in above matters. For example, the right of inheritance is entirely dependent on the capacity to offer *Shraddha*. If any changes were contemplated in the Law of Inheritance, then it would be necessary to find out whether any change was possible in the rules as regards the capacity of persons to offer *Shraddha*. So no such change is legitimate when undertaken by lawyers without the *Dharmashastra*. Codification is possible in those countries where the society is homogeneous. Hindu society is non-homogeneous, it is a complex organisation. No one system of law governs them. There are two major schools of law ; and there are further sub-divisions in these schools, for practically every province. In such circumstances a uniform law for the whole of India is a crude attempt. In memorial usages are not to be pushed aside on the sole ground of simplicity and uniformity. Sir, the son's position in the Hindu *Dharmashastra* is a unique one. According to the *Dharmashastra* the son represents his father in all respects, in his presence, neither a widow nor a daughter can represent the deceased : so neither a widow nor a daughter can, with any sense of logical consistency, be included in the same place as that of the son.

Even the males are not entitled to deal freely with their property in a joint family, and the object of this is that the property must continue in the family making the woman estate an absolute, one would be destroying the integrity of the family.

A daughter can never continue to be the agnate of her father after her marriage. She enters the *Gotra* of her husband. And [it is very necessary, on taking into consideration the principle of the Hindu social system, that the wife should have the same *Gotra* as that of her husband. There cannot be any change in these beliefs.

Again, Sir, *Stri-dhan* question has been wrongly tackled.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY (West Bengal : Non-Muhammadan) : Sir, at the time I signed the Congress Pledge, I made it clear that in matters affecting Hindu interests I would be at liberty to exercise my individual judgment. As this Bill vitally affects the Hindus, not only of the present time but of the future generations as well, I rise to speak on this measure ; otherwise I would be failing in my duty to my constituency which I have the honour to represent and to the community to which I belong.

Sir, neither a copy of the Rau Committee's Report nor a copy of the Bill has been supplied to us. From the little that I have come to know of the Bill, I consider that the Bill has been brought at a very inopportune moment, and that as this is a measure for the Hindus to decide, it should not be passed with the aid of those who are not governed by the Hindu law.

By a stroke of the pen the Rau Committee has offered *pinda* to the *Pinda* theory of the Hindus. In the same way, *Atmabandhu*, *Pitrabandhu* and *Matrabandhu* have all been converted to one class of *bandhu*. Sir, giving the daughter a half share to that of a son looks like copying the Muhammadan law in that respect. Consider what will happen to a house used as the family residence. The daughter, when married, has no interest in the house, as she is not going to reside in that house but in that of her husband's family ; and she will be inclined, through the influence of her husband's family, to dispose of her share in the residential house to the highest bidder—to a person who may be quite a stranger.

Then, Sir, it has been proposed to give the widow an absolute estate instead of a life estate. Under the Hindu law a woman can always alienate the property inherited by her for legal necessities like maintaining herself, giving her daughter in marriage, and for her pilgrimage. There is the prospect of a widow without any issue who gets an absolute estate transferring the same in favour of her brothers or nephews, or, in case she chooses to remarry, in favour of her newly married husband or the issue of the said remarriage, thus depriving the heirs of her deceased husband from whom she inherited. The very idea that this state of things may happen is repugnant to the Hindu mind.

I learn that the Bill will not come into force till after three years, to enable the provinces to pass complementary Bills in respect of agricultural lands. Now, Sir, what will happen if any of the provinces do not like to pass a law similar to this Bill ? Then there will be one law of inheritance for the agricultural lands and a different one for the rest of the property left by a Hindu who dies intestate. One may imagine what the result will be, as litigation is bound to follow over the distribution of the properties so left.

May I suggest, Sir, to the Government that, if they are determined to pass the Bill, they should let it be a permissive measure for the provinces to take up with respect to every kind of property left by a Hindu who dies intestate.

With these words, I oppose the Bill.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Sir, the three speakers who preceded me have expressed their individual views on this Bill, and I think I shall be right in saying that this Bill is a controversial measure. It has excited controversy in almost all parts of India after the Motion that was made in the other House by my Honourable friend the Law Member for a joint select committee.

My first objection to the Motion before the House is that Government should have waited for better times and then they should have introduced this Bill. I say this because all our energies, according to me and according to some others who think like me, are devoted to a different purpose altogether now, and that purpose is winning the war. All Provincial Governments are busy discussing measures and finding out methods how to win the goodwill of the people. I think, therefore, that

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under the circumstances Government ought not to have taken this step of introducing this Bill in the other House and moved a Motion for a joint select committee.

Apart from this, another point that I want to make is that—with all due respect to the Rau Committee—I think that Committee have not completed their labours. It was not possible for them to complete their labours. Hindu law, as administered after the advent of British rule in India, and as interpreted by the various High Courts and the Privy Council, has, though not to a very great extent, to some extent at least, satisfied the orthodox people—people who hold views based on *Smritis* and *Shastras*. Therefore, a revolutionary change like the proposed one ought not to be undertaken with such undue haste unless the Rau Committee examines the whole of Hindu law and prepares a Code.

Personally I am in favour of a Code. Sir, I do want a Code to be taken up; I do want it to be prepared only after hard labour, after examining the people concerned—I mean the Pandits and Shastris and other Hindus who have studied the *Shastras* and the *Smritis* and *Vedas* carefully and who know their implications. The Rau Committee should have submitted its Report only after taking into consideration their points of view. I therefore submit that, though the Rau Committee took great pains in preparing this Bill, they have not, so far as the present measure dealing with intestate succession is concerned, taken into consideration the views of the Shastris and Pandits. They have not examined those views. Therefore, I think that their labours are not complete. That is my submission.

An ordinary Bill—as I may call it—like the Bill known as the Sarda Bill excited great interest in the country. What did the Government do? The Government appointed a committee, called the Joshi Committee. The Committee toured the whole of India, took evidence from all parties concerned. Then they framed their views, and after that a Bill was introduced in the Central Legislature. I find fault with the Government for not taking a step in the right direction as they had done in the past. The Government know, as has been pointed out by the two Honourable Members who have already spoken, that the Bill affects not only the reformers in Hindu society, not only the educated people like me, but also people in the villages who do not know anything about it, who have pinned their faith—I can tell from my own personal experience that they have pinned their faith—on the *Shrutis* and *Sastras*—

THE HONOURABLE SIR SULTAN AHMED: So so I.

THE HONOURABLE MR. V. V. KALIKAR: Therefore, Sir, I submit that undue haste would not in any way help the Government or the reformers to change a system that has been in existence and which has ruled a particular society for so many centuries.

My third point about this undue haste is this. I am submitting it before this House because I feel it is necessary that I should do so. There is an organised Hindu organisation. It may not be in power as the Congress. But there is an organised Hindu organisation, the Mahasabha, whose leader and President is Mr. V. D. Savarkar, whom I know at very close quarters and who holds very forward and progressive views in social matters. Still he has sent a wire to the Government of India that the Government should not proceed with the Bill in the present time. Sir, it has been argued by my Honourable friend Mr. Lal that piecemeal legislation is not in the interests of the society, that certain individual members of the Central Legislature introduced Bills and got them passed,—Dr. Deshmukh got two Bills passed—and therefore Government were goaded to do this. My answer is this. Those were Motions by a member elected from a constituency. But here is a Motion from the Government which is not responsible to the Legislature. A Motion from a Government of this sort, under which the Government want to change the personal law of a particular community should not have been undertaken at this stage. Sir, I cannot do better than just read what the Provincial Government of the Central Provinces say about it. The Provincial Government say:—

“The Provincial Government is in favour of codifying the Hindu law and amending it provided the amendments are *suitable and universally accepted*. Government should, however, leave the matter of amendments to the members of the Legislature and interfere only in very exceptional circumstances. It is for the Legislature and particularly the Hindu members of the Legislature to decide what is good for the Hindus”.

Applying this criterion, Sir, was the Government of India justified in introducing

his measure at this time? The Government of India know that the other House is practically half empty, not for any fault of the Government of India but of their own fault. About 50 or 60 Hindu members are outside the Assembly. I do not say that these members, if they had been present, would have opposed the Bill. Many of them would have supported it. But, as a Government intending not to interfere in social matters, as a Government desirous of taking into consideration whether a measure which affects the personal law of a particular community is universally accepted or not, Government ought to have waited for some time and then they should have embarked on their mission of introducing a social measure for changing a personal law. Therefore, Sir, I submit the Government committed a mistake, if I may use this word, in introducing this Bill at this stage when the Congress and the Hindu members in the other House were out of it.

Sir, as you have warned us that this is a Motion only for reference to a Joint Committee and we should curtail our speeches, I will try to be as brief as possible.

THE HONOURABLE THE PRESIDENT: You have already nearly finished your time.

THE HONOURABLE MR. V. V. KALIKAR: I will finish my speech within five minutes, Sir. The Bill introduces principles which are really of a revolutionary nature. I say revolutionary nature, because under the Bill you want to deprive men of the rights which they have been enjoying for centuries, and substitute females in their places. Under usage and customs on which certain laws are passed not only in India but in other countries also, we find that the males have got certain rights and privileges and also certain liabilities, when they inherit property. Here, daughters will have no liability. I use the word "liability" in this sense that when a son is born, he has to perform the *shradda* ceremony after the death of his father. A daughter is not entitled to perform the *shraddh* ceremony. That is a liability on

12 NOON. the son. Apart from the argument that the daughter or the widow to whom absolute interest will be given will waste the property, apart from the argument that there will be fragmentation of the property, what I submit is this that under the principle of this Bill by allowing the daughter to be put on next to the widow you not only give her property but you fix no liabilities on her. Sir, I am in favour of making some provision for the daughter. I am not against making provision as of right but I would confine it to my own *gotraja*. She cannot remain in my *gotraja* if she is married to another family. Her interests lie with her husband's family and not with my family. If the reformers are so enthusiastic about the interests of ladies, and which I appreciate very much, provision should be made for giving them financial help by way of dowry at the time of the marriage, or giving them some portion of the estate as a limited interest but not making them absolute owners of the property.

THE HONOURABLE THE PRESIDENT: You can suggest all these things in the Select Committee.

THE HONOURABLE MR. V. V. KALIKAR: The absolute owners of the property must be the male owners and not the female. Sir, I am speaking on the general principles of the Bill. I am not speaking on the details of the Bill. I have reached my time and I will finish within one minute.

Sir, so what I submit is this. You cannot say that this is not a revolutionary change in the personal law of the Hindus. You cannot say that you are rushing the Bill because the Rau Committee's Report was published in 1941. If you read the opinions of the two or three District Judges from my province—judges who have to deal daily with cases of this nature—you will find that in their view that measures of this sort instead of curtailing litigation will increase litigation to a very large extent. Not only that but you have to take into consideration the conservative mentality of Hindu society. It is no use placing a measure on the Statute-book if it is to remain a dead letter. I would, therefore, submit, Sir, that the Government should not have made such hot haste in introducing the Bill in this session.

Sir, my Honourable friend Mr. Lal said that as a non-Hindu he could take an impartial and detached view of the thing. I fully agree with him but is he in a position to take such a view? I am afraid he is a servant of the Government which has introduced this Bill here and therefore he is not in a position to take a detached view. Only those who have a Hindu mentality and who have studied *Srutis* and *Smritis*

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carefully and understood their implications, it is really they who can take interest in a measure of this kind and make changes which are necessary in the interests of the society as time wants.

Sir, I would request the Government to postpone the consideration of the Bill for a further period till better times.

THE HONOURABLE SIR RAMUNNI MENON (Nominated Non-Official): Sir, it is a matter of some surprise to me that a beneficent and, as far as one can see, necessary piece of legislation intended to improve the position of the Hindu woman in regard to certain aspects of property should have evoked so much opposition in this House, and the surprise is all the greater because the opposition comes at a time when there has been an incessant and loud demand for the introduction of the most unqualified form of democracy into this country—a system of government which presupposes for its successful operation social, political and economic equality among all members of the community. Now what are the grounds for this opposition? It has been suggested that the moment chosen for the introduction of the measure is inopportune. I am prepared to admit that that is a matter on which there is room for difference of opinion. But the memorandum attached to the Bill gives what I consider sufficient and cogent reasons for introducing the measure at this stage, and as far as one could judge the balance of advantage is certainly on the side of getting on with the measure. But this objection I must honestly confess is only a kind of preliminary skirmish. The real objection is much more fundamental. That objection seems to me to be that those who are opposed to the Bill have out of their regard for past traditions and the ancient legal codes found themselves unable to reconcile their point of view with the spirit of the times. To such people I can only commend the well-known lines of George Eliot who in her day was a very forward champion of the rights of women:—

“ We had not walked but for tradition ;

We walk evermore by brightening reason's lamp ”.

Now look at the question on its merits. Fortunately I come from a part of India where we enjoy the privileges of being Hindus without the disadvantages of being governed by the Hindu law. Among the matriarchical communities of Kerala, ranging from the ruling families right down to the humblest matriarchical family, we have a legal and social system which gives absolute equality to women not only in the economic field but also in regard to her matrimonial and other social affairs. No critic of our society who has studied our system thoroughly has detected any signs of social degradation or economic disintegration which can be traced to the equality of women in our society, and I fail to see if we can live under such a system and if our womenfolk can exercise equal rights with men, how in other parts of India the granting of equality to women is going to undermine the social structure.

In recent times women have made remarkable progress in many spheres of human activity. In our own country, in the field of education, in the fields of administration, professional work, social service, and politics, in many other fields they have shown not only eagerness and capacity to participate in work but have achieved considerable success in every walk of life that they have taken up. I think it is high time that women who have shown such capacity should be allowed to show equal capacity in managing their own estates. That, I believe, is one of the purposes of this measure, namely, to invest woman with full rights over her property and of its management.

After all, the present proposal is only to refer the draft Bill to a Select Committee and the Honourable the Law Member in his speech in another place has shown that he is particularly anxious to accommodate the views of the Opposition. He has detailed certain measures which he proposes to adopt and it appears to me that, ever to the most hostile critics of the Bill, those measures should be a sufficient guarantee that all aspects of the matter would be thoroughly gone into. I, therefore, Sir, have no hesitation in giving my cordial support to the proposal before us.

THE HONOURABLE RAJA YUVERAJ DUTTA SINGH (United Provinces Central: Non-Muhammadan): Sir, even at the risk of exposing myself to ridicule, I regret I cannot conscientiously support this Bill in its present form. It purports to make fundamental changes in the Hindu law, which is based on the principles of religion and deep-rooted traditions and also adaptability to circumstances; that

have withstood the ravages of time, and proved their utility, in spite of successive waves of foreign military invasions, to which India had been subjected in the past. The present, again, does not appear to be a suitable time to bring forward controversial measures like this, and create distraction, when our efforts should have been to put forth our united energy towards the successful prosecution of the war, which is knocking at our very doors. When the Government have been postponing elections to legislative and local bodies, which have been long overdue, on the plea of avoiding unnecessary agitation at this critical time, I wonder why they are persisting in going on with this measure at this inopportune moment.

Sir, I am not familiar with the past history which has culminated in the inauguration of this Bill ; but I find from the Statement of Objects and Reasons that it is the result, or rather one of the results of the recommendations of the Hindu Law Committee ; for I find that the Government have set before themselves the comprehensive and ambitious object, namely, that "the Hindu law should be codified in successive stages, beginning with the law of succession, to be followed by the Law of marriage", to quote again from the Statement of Objects and Reasons. Sir, in the first place, the Report of the Hindu Law Committee is not before us, at least it is not before me ; and I do not know if they were circulated to the Honourable Members of this House. In face of the threat which the Honourable the Law Member has held out to us, in the shape of bringing forward other Bills of a similar nature I am constrained to raise my feeble voice of caution at this course of procedure. Sir, if the Honourable the Law Member had brought forward a Bill prohibiting, for instance, polygamy amongst the Mussalmans, a very desirable object, what sort of reception such a Bill would have received at the hands of those affected by it ? They would have said that the measure seriously affects their *Hadis* and other religious injunctions, and beliefs ; and should not be taken up light-heartedly and in haste ; and they would, in my opinion, have been perfectly justified in raising such a protest.

I would suggest, Sir, that this and similar measures should, for the present, be postponed, that elections to the Central Legislature, which have been long overdue, should be allowed to be held on this and similar specific issues, and then we should abide by the result. I am not making this suggestion in any spirit of challenge, but only as a fair and constitutional method of ascertaining public opinion of those who will be vitally affected by the measure.

Sir, I feel I am not equal to the task of attempting a dissertation on the complex and complicated legal problems of Hindu law, and their implications ; but as a layman, I can only say that the Hindu law is based in the matter of inheriting property on the capacity to offer *Pinda* and *Shraddha*. In presence of the son, the daughter, and the daughter's son, or daughter's daughter, for instance, are not competent to offer *pinda*, or oblations to the deceased, and hence their exclusion from inheritance. The object of begetting a son is :—

पिन्डीदकं कुर्या हेतोः नाम संकीर्तनाय च,

i.e., the son is intended to offer *pinda* or oblation, and to perpetuate the family name. The daughter, after her marriage, loses the *gotra* of her father, and passes on to the *gotra* and family of her husband, from whom she inherits. To make her inherit a part of the property of her father, along with his sons would be to introduce complications, friction and strife in a family in which peace and contentment once reigned. If the daughter is married at a distant place from her father's house, which is, I think, usually the case, it will be very difficult for her to manage the property inherited from her father ; and if she takes the help of anyone else, as manager, for instance, the relation between her brother, who would naturally feel that he has been deprived of a part of his property, and those whom he will be compelled to look upon as strangers and interlopers, would be anything but smooth and peaceful. Sir, I am giving one instance only to illustrate my point. The right to inherit on the capacity to offer *pinda*, or *oblation*, is peculiar in the Hindu jurisprudence, and I think, does not obtain anywhere else in the world, just as the institution of marriage is a religious sacrament among the Hindus, but is only a civil contract among others, dissoluble at will. Sir, I have full sympathy with the legitimate aspirations of our women, and I unreservedly recognise their intellectual capacity, and outstanding position. In fact our *Shastras* have assigned to them an honoured place in the social

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fabric of life. But these and other factors should make us reluctant in hurriedly interfering with the honoured position assigned to them by our ancient lawgivers. I must not be supposed to be an opponent of their rights and aspirations; but I plead for further time for a dispassionate consideration of such controversial matters, which impinge upon the vital social and religious springs of our every-day life.

Sir, I do not want to say any thing more at this stage; but will merely conclude by reading out one passage from the opinion of the Advocate General of the United Provinces, given at page 14 of the Opinions (Paper No. 1). The passage is as follows:—

“At the risk of being called a conservative and old-fashioned man, I am not in favour of giving daughters a share in the estate of their father along with the sons nor am I in favour of allowing absolute estate to the females succeeding to the property of their male relations. In my opinion, the existing rule of Hindu law of not allowing any share to the daughters in presence of the sons has had a very healthy effect on the Hindu society. By allowing a share to the daughters the same confusion and minute partition of the property will follow as in the case of Muslims. There will also be constant quarrels between the daughters' husbands and the sons of the family and in most cases the brothers will obtain deeds of release from the daughters by exercising undue influence or adopt other devices to defeat their shares as it has been often observed in the case of Muhammadans. Moreover, the Hindu sentiment revolts against the passing of the ancestral family property into other families absolutely. The daughter once married passes into another family and has her rights there. She is very often given good deal of dowry even by the poorest Hindu to compensate her deprivation of the patrimony”.

THE HONOURABLE THE PRESIDENT: That is the personal opinion of the Advocate General. You need not dilate on it. What is wanted today is your opinion.

THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Of course, innumerable opinions on the other side also could be quoted; but the above represents my view, and the view of the orthodox Hindus.

I know, Sir, that when Government have made up their mind, we are bound to lose, specially in an attenuated House like this. But in making the few observations, which I have made, I sincerely feel I have done what I conceive to be my duty.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern: Non-Muhammadan): Mr. President, no Hindu could have expected, when the Report of the Hindu Law Committee was published, that the result of its labours would be the preparation of a Bill which would be accepted unanimously by the Hindu community. Those who are aware of the controversies that were raised by such measures as the Age of Consent Bill and the Sarda Bill could not hope that any far-reaching measure of social reform affecting the Hindu community would not give a shock to orthodox opinions and would not greatly disturb the minds of those who were content to follow age-long traditions, whatever their social effect might be.

Sir, after having carefully considered the views of competent Hindu lawyers and judges, I have personally come to the conclusion that it is my duty to support the principle underlying the Bill before us. I support it not to hurt the feelings of orthodox Hindus, but because I consider that bare justice requires that the status of women should be raised, and that their position both in their own families and in those of their fathers-in-law should be of greater independence than it unfortunately is at the present time. I am conscious of the fact which has been stressed by several Honourable friends of mine, that even in proceeding with a measure of reform relating to Hindu law, it is the duty of the Legislature to ascertain Hindu opinion and not to depart violently from it. I shall, therefore, refer to the Report of the Rau Committee in order to enable Honourable Members to decide for themselves whether the Committee acted in haste, or went beyond its terms of reference, or drafted a measure which was contrary to the opinion of the majority of those competent men whose views it invited through its questionnaire.

It has been suggested that the Rau Committee exceeded its terms of reference when it proposed the enactment of the law that we are considering now. My Honourable friend the Law Member has dealt with this and other matters affecting the Bill so lucidly in his speech in moving, in another place, that the Bill be referred to a joint select committee, of both Houses, that it is a matter of regret to me that any one of us should have to deal with it again. It is a pity, Sir, that his speech was not circulated to members of this House so that they might know all the

circumstances attending the appointment of the Committee and the publication of its Report. No one who takes the trouble to read the Resolution issued by the Government of India on the 25th January, 1941, appointing the Rau Committee would be so rash as to say that the Committee went beyond its province in making the recommendations that it did. That is the first point that I should like to stress in this connection. Some Acts that had been passed by the Central Legislature and a number of Bills introduced in it or about to be introduced were referred to the Committee for its opinion. The Committee, in dealing with the matter, pointed out the difficulties of dealing with such a matter by piecemeal legislation; it accordingly recommended that the Hindu law should be codified. Its exact words are:—

"The recommendation which we should like to stress most strongly is that relating to the preparation, in gradual stages, of a complete code of Hindu law, beginning, as we have said, with the law of succession, to be followed by the law of marriage and in due course by other topics of Hindu law".

I cannot too clearly ask the House to remember that at the first stage the Committee brought forward no measure of any kind whatsoever changing the Hindu law. All that it suggested was that the necessity of codifying the law by successive stages should be recognised.

THE HONOURABLE THE PRESIDENT: Thirty years ago, Rash Bihari Ghose asked for the codification of the Hindu law in the Legislative Council.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Exactly. I shall point out later that the demand for reform has come from the Hindus themselves. For the present, however, I should like to draw the attention of the House to the Statement of Objects and Reasons signed by the Honourable the Law Member. My Honourable friend says with reference to the Report of the Rau Committee:—

"The Report had a favourable reception and the recommendations contained in it were accepted by the Central Government. Accordingly, the Committee proceeded to draft a Bill on the Hindu Law of intestate succession, as the First Part of the contemplated Code. They began by preparing four memoranda on the subject, which were then circulated for criticism to prominent lawyers and other interested persons throughout India. The memoranda have been in circulation, as mentioned, since August, 1941".

This shows, Sir, that the Committee proceeded to draft the Bill that is now before us only when it was asked to do so by Government and that the measure was prepared only after eminent Hindus all over India had been consulted.

THE HONOURABLE MR. V. V. KALIKAR: Question.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Sir, my Honourable friend Mr. Kalikar questions this opinion of mine. I would draw his attention to the opinions that have been received in connection with this Bill. That there should be many eminent men who have opposed this Bill need be no matter of surprise. But it is a matter of welcome surprise at least to me that the opinions should disclose so large a volume of orthodox opinion in favour of the measure before us. I do not think, Sir, that anything before us points so impressively to the need for making changes in the existing practice as the opinions that have been circulated to us by Government. Apart from this, those who have read the explanatory note prepared by the Rau Committee must be aware of the fact that in every important instance the Committee has modified the opinions expressed by it in the draft Bill out of deference to the opinion of the majority of those whom it consulted. It cannot, therefore, be said that the Committee either acted in a hurry or made an attempt to force its own opinions on the Hindu public, the larger section of which was opposed to any change. Again, Sir, I should like to point out, when the need for consulting orthodox Hindu opinion is pressed, that the members of the Committee were Hindus, and Hindus well qualified to deal with questions relating to Hindu law. One of them, Mr. J. R. Ghorpure, Principal of the Poona College, is an orthodox gentleman and a lawyer whose knowledge of Hindu Law no one can doubt. I have had the happiness of knowing Mr. Ghorpure for nearly 35 years. If he cannot be called orthodox, no Hindu, I think, can be entitled to be regarded as such. If he can be regarded as ignorant of Hindu law, no Hindu lawyer can claim to be acquainted with it, and it weighs heavily with me that a person of the orthodox views and learning of my friend Mr. J. R. Ghorpure should have fully concurred in the recommendations of the Rau Committee and in the provisions of the Bill before us. This

[Pandit Hirday Nath Kunzru.]

fact shows more eloquently than any other that the measure before us is in all essential respects in conformity with the fundamental principles of Hindu law.

Apart from this, Sir, as my Honourable friend the Law Member pointed out in the other House, the Hindus would be doing a great injustice to their society and to themselves if they regarded Hindu law as a body of principles or customs which apply to all times. Hindu law, so far from being unchanging, adjusted itself slowly to the changing needs of the times and was, generally speaking, of a progressive character. It was only when questions that were formerly regulated by public opinion and the views of eminent lawgivers were dealt with by British courts that Hindu law was petrified and Hindu society was deprived of that opportunity of making healthy changes in it which were required by new circumstances.

Sir, there is only one other objection that I should like to refer to before I bring my remarks to a close. Some of my Honourable friends have accused the Government of having gone against the principle of religious neutrality which the Crown solemnly accepted after the Mutiny. I should like to point out in this connection that the Bill before us is not the work of a malevolent Government seeking to undermine the foundations of Hindu society but has been drafted in response to felt needs and in accordance with the views expressed by eminent Hindu lawyers and jurists all over the country. In the second place, Sir, the Bill owes its existence to the desire expressed by the Central Legislature through a number of its members who brought forward Bills modifying existing Hindu practice that the time had come when the old law should be changed and brought into consonance with the awakened conscience of the Hindu community in general. I should like further to clinch the point by reference to the Tagore Law Lectures of 1912 delivered by Mr. Vijaya Kishore Acharya who as an inhabitant of Bengal was governed by the Dayabhaga law. In dealing with the question of reform of Hindu law, he said "It may be urged that such a condition is essentially necessary in this country (that is that the Government should remain neutral because of the principle of religious neutrality) but the answer to this argument—I should like the House to note this carefully—but the answer to this argument is that this principle was adopted at a time when the British administrators had no means of ascertaining the views of Indians and the true rules of Hindu law. Then opposition came from the class of people who are now asking for such legislation when there was no division or difference of opinion amongst the Hindus themselves and the whole community led by its leading members opposed a legislation affecting the rules of Hindu law or custom; but now it is not the non-Hindu members of the Legislature but its Hindu members who are introducing Bills dealing with the rules of Hindu law and they are supported by a large number of Hindus themselves. Then the position of affairs was that non-Hindu religion was opposed to Hindu religion and when any point of Hindu law was discussed before the Legislature it was incumbent on the Legislature not to proceed with it except under special circumstances. But now it is the Hindu religion against Hindu religion". In view of this opinion of an eminent Hindu, I think, we should completely acquit Government of the charge brought against it of dealing wantonly with the religious law or customs of the Hindu community.

Sir, in view of the considerations that I have pointed out, and also of the statesmanlike attitude adopted by the Honourable the Law Member in the other House, I have great pleasure in giving my whole-hearted support to the principles underlying the Bill before us. My Honourable friend so far from giving any cause for legitimate grievance to any section of Hindu opinion has brought forward a very moderate measure and has gone so far as to say that he would be prepared to examine before the Select Committee two or three experts nominated by the opponents of the Bill in the House—experts particularly from Bengal from which the bulk of the opposition has come. He, has also promised, Sir, that the implications of giving the daughter in the greater part of India a share in her father's self-acquired property would also receive consideration so as to avoid injustice to any interest and has further given the undertaking that time will be given to the public to express its views on the Bill if it emerged from the Select Committee in a form that rendered such a course necessary. I do not think

Sir, that the Government could have taken up a more reasonable attitude than my Honourable friend the Law Member has done. I wish that every member of this House had read the cogent and eloquent speech which he delivered in the other House. Had my Honourable friends done so, I am sure that many of the misunderstandings and misapprehensions which they are labouring under would have been removed, and they would have joined with all those Hindus who are desirous of maintaining the good name and elevated character of the Hindu Law and who are keenly anxious that it should be changed from time to time in such a way as to be in accordance with our evolving and rising conceptions of social justice in supporting the Bill before us. Hindu women have for too long a time been treated as inferior beings in India. The time has come when it ought to be recognised by Hindus that the daughter has the same status as the brother. If we recognise that principle we shall strengthen Hindu society and take a step towards building up an India on sound and strong foundations, an India, all sections of which will feel that their rights would be protected by enlightened democratic opinion.

THE HONOURABLE SIR SULTAN AHMED (Law Member): Sir, much that I had to say on this occasion has been said eloquently, and certainly more lucidly than I would have done, by my friend Pandit Kunzru.

Sir, I do not apologise at all for having sponsored this Bill. On the other hand, I feel that it has been my privilege to have brought forward a measure which in my opinion is bound to improve the status of this country internally as well as internationally. Sir, having delivered a very long speech only the other day on this subject in the other House, it is not my desire to inflict another on this House. The charges are, first, that Government have rushed this measure; secondly, that the Rau Committee did not consider the various points of view; and thirdly, that in these days a legislation like this is undesirable. All these charges are absolutely without foundation. Pandit Kunzru has already referred to you the steps that were taken by the Government before they introduced this legislation in the other House.

Sir, in 1937 an Act was passed by the Central Legislature giving certain rights to daughters-in-law. I ask my Honourable friends who know Sanskrit better than I do to point to me any *Sruti* or *Smriti* by which the daughter-in-law has got a share in the property of the father-in-law. Having introduced a daughter-in-law who had absolutely no right either on the *Srutis* or *Smritis* they created tremendous complications. The House is aware that if A dies leaving a son, son's son or son's son's son they come and inherit his property on intestacy. Failing them comes in the widow, that is in the fourth place. The fifth place is given to the daughter. There are ample texts in the *Smritis* which give a place to the daughter—whether as limited estate or as owner of the property is another matter. The Act of 1937 not only gives a place to the daughter-in-law but grand-daughter-in-law and great-grand-daughter-in-law. I take it to mean this: that if these three live about 100 years the daughter—and even more reversionary heirs—are completely pushed out. Have my Honourable friends who have talked about the revolutionary character of this Bill ever realised that the daughter who had a place in the *Smritis* goes out completely and can never come if the daughter-in-law, grand-daughter-in-law and the great-grand-daughter-in-law find a place after the widow. Was not that revolutionary?

Government were faced immediately after the Act with an amending Act of 1938 which was passed. Since then, let me tell the House that at least 15 measures were brought forward before the Assembly in different forms. Some of them are not referred to in the Rau Committee's Report; 15 Bills or notices of Bills were brought forward or given—some to improve the position of the daughter, some to give the daughter a proper place, some to provide maintenance, residence, and so on to the widow. Government, finding themselves faced with a rush of these private Bills, had to undertake the responsibility. It is only right that the Government should intervene at a stage, when at the request of the Hindu members of the Assembly, the Honourable the Home Member had to promise that Government would undertake legislation. It was not of their own volition that they did it.

[Sir Sultan Ahmed.]

A statement had to be made in the Assembly itself by the Home Member agreeing to undertake legislation after careful examination of the various Bills which were contemplated or which were already introduced in the House. Can it be said that the Government hastily intervened where angels feared to tread? I respectfully submit not. Having undertaken to take up legislation, look at the extreme care and caution exercised by the Government. The Government appointed a committee consisting of four extremely able men who could be considered competent to deal with such a subject: Sir B. N. Rau, a distinguished and a brilliant Judge of the Calcutta High Court, who, as I said in the lower House, combines in himself the rare qualities of respect for old traditions and a clear vision for the requirements of the future, extremely industrious and hard-working, was the Chairman. He was supported by Dr. Dwarkanath Mitter, a distinguished lawyer of the Dayabhaga school, who presided over a Bench of the Calcutta High Court for over eleven years, and now, I am glad to say, is practising before the Patna High Court; he is also an author of a treatise on the position of women in India. The next was Mr. Ghorpure, to whom a merited tribute has just been paid by my Honourable friend Pandit Kunzru; a scholar of great reputation and author of a very learned work on the position of women in India. The third member was Mr. Joshi. He also had extraordinary experience of a Hindu Code in the State of Baroda. Will my Honourable friends, who say that the Government here is violently interfering with the principles of Hindu law, only go to Baroda and Mysore—Baroda has already got a Hindu Code and Mysore is going to have one very soon—will they kindly go to those places and see whether the Hindu Code as prepared by them is revolutionary or is not revolutionary, whether it is possible to have a Hindu Code or not, whether it was desirable for the Government to intervene and secure a committee to suggest recommendations to the Government on this matter?

Sir, I will say no more about the Government's attitude and the competency of the Rau Committee. I hope that this House is now satisfied that not only was the Rau Committee competent but the Government was fully justified in proceeding with the Bill.

I now propose to say just a few words, Sir, on the Bill itself. The Bill proceeds to do three things: firstly, to find a common line of succession on intestacy. The Bill provides that so far as the enumerated heirs mentioned in clause 5 of the Bill are concerned we should follow the Dayabhaga school. So far as the distant heirs are concerned we should follow the Mitakshara school. Anybody who will just sit down and consider the situation will find that in 199 cases out of 200, the position will be the same as at present. Whether you apply the Mitakshara law or whether you apply any other law the result will be the same. We propose to sit down in the Select Committee, discuss all this and if my Honourable friends can satisfy me there that this is wrong or unjust—I am open to conviction—I certainly shall make those alterations which are essential.

As regards the second point, which is the second salient feature of the Bill, that is sex disqualification, I will have no compromise at all. If those friends who have opposed the Bill here today can show me any *Sruti* against it—please don't run away with the idea that because I am a Muslim I do not know anything about these things, I know enough though probably not so much as you do naturally—that is in the Vedas and Upanishads, which will show that women are disqualified to hold a share in property, I will withdraw this Bill.

Then we come to *Smritis*. Sir, the original *Smritis* were the Code of Manu, the Institute of Yajnavalkya and the Institute of Narada. Now, on the text of Yajnavalkya we have got the main Mitakshara. Mitakshara is accepted as good law for the whole of India *minus* Bengal—but there also in very

1 P.M.
many respects Mitakshara is followed. Mitakshara is also sub-divided. You have the Mithila school in the province from which my Honourable friend Rai Bahadur Mahtha comes. Then you have the Mayuka school in Bombay. Then you have the Dravidian school in Madras. Then you have the Benares school. All these schools are sub-schools of Mitakshara. So far as Dayabhaga is concerned, that is the digest of all codes.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: It is more progressive.

THE HONOURABLE SIR SULTAN AHMED: Certainly it is.

Dayabhaga is the digest of all codes. The difficulty arose in the interpretations given by commentators. Commentators in those days used to give the text as it suited them, and they always used to put what is generally called the gloss. The result has been terrific confusion. I am prepared to produce, for every statement made by one commentator, another view, just opposing him on the same text, given by another commentator; so much so that Justice Strange of the Madras High Court, about a hundred years ago, said as follows:—

“To those who have made the Hindu law any part of their study, it cannot appear strange that it is so unsettled and contradictory. Many of the opposing writers are in point of credit equal to each other and regardless of consistency, texts are adapted by each for the purpose of sustaining some particular doctrine. The obsolete is confounded with the acknowledged law; the context is often omitted and passages which ought to be relatively considered are quoted as if they were absolute and independent in themselves. We cannot therefore wonder that so little satisfaction is to be obtained from authority, nor can we but lament that some effort has not long since been made to distinguish and separate those which are, from those which are not, rules of action”.

Srutis are binding upon us. No Government can possibly interfere with them. An Honourable Member very light-heartedly referred to the Muhammadan law and said he would like to know how the Muhammadans would bear interference with that law. He forgets that our law is based on the Quaranic law, which is divine, which is revealed. And that is the meaning of *Sruti*: *Sruti* means “revealed”; *Smriti* means “heard”. *Srutis* cannot be changed. Quran cannot be changed. If anyone can show that an attempt has been made to change the *Srutis*, I will surrender. But I know there is no such attempt. *Smritis* however can be changed. It is no good saying that you cannot change *Smritis*. They have been changed since 1850. Take the Marriage Bill of 1850, followed by the Bill of 1856. Then you come to 1923; then to 1929. What is the good of your saying that *Smritis* cannot be changed? In 1929 this very House enacted a piece of legislation by which it brought in the sister's son. What was the sister's son's status before? This House brought him in by legislation in 1929. Why are you then accusing us of interfering with your *Smritis*, as if we were doing something most revolutionary. You have done it before.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY: The sister's son was an heir in Dayabhaga.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Not in Mitakshara which occupies by far the most important position in Hindu law.

THE HONOURABLE SIR SULTAN AHMED: The whole of India minus Bengal is governed by Mitakshara, and under that text the sister's son was not an heir. It was only in 1929 that you brought him in. And now you come and say we have no right to interfere with your religious law. What is more, in 1937, you brought in the daughter-in-law, the grand-daughter-in-law, and the great-grand-daughter-in-law, and shoved out the daughter altogether for whom at any rate there is an express text in the *Smritis*.

Then, Sir, it has been said that women are not qualified to hold property, because there is the *Smriti*, and under that text, the son, daughter and slave cannot hold property. In the lifetime of the father, “the wife, the son and slave could hold property”. That is in consonance with the general position in the old laws of the world. At that time not only among Hindus in India, but even under the Roman law and the Greek law, you will find exactly the same position: as long as the pater familias was there, the others did not come into the picture. But, Sir, now we are considering the position after the death of the father. That text, therefore, will not apply in the case that we have under consideration. We are dealing with a case where the father dies intestate. If you were to bring in that text in this case, you would be in serious trouble, because the son does hold property. How then can you exclude the widow? So much on the point of disqualification of women to hold property.

Sir, I do not conceal from myself that there are several important matters in the Bill which need very careful consideration; and on those matters I want the best help possible. Not only do I want the help of the members of the select committee, but I want help from outside. Learned pandits were consulted by the Raj

[Sir Sultan Ahmed.]

Committee. I am prepared again to consult them and to have the benefit of their advice.

THE HONOURABLE MR. V. V. KALIKAR : May I interrupt? Were they examined before the Rau Committee?

THE HONOURABLE SIR SULTAN AHMED : They submitted memoranda.

THE HONOURABLE MR. V. V. KALIKAR : I know.

THE HONOURABLE SIR SULTAN AHMED : If you know, it is all right.

THE HONOURABLE MR. V. V. KALIKAR : They were not examined.

THE HONOURABLE SIR SULTAN AHMED : Nobody was examined. I did not say that anybody was examined. If you want to see what the Committee did, just refer to their Report. I apologise for reading just one passage:—

“ We have tried to distribute the questionnaire as widely as the time and staff at our disposal permitted; we have addressed High Court Judges, distinguished lawyers and citizens, members of the Central Legislature, High Court Bar Libraries, heads of religious institutions, Women's Associations, Social Reform Associations, Pandits' Associations, and others..... Two learned Pandits have paid us the compliment of sending their answers in Sanskrit. We have studied every opinion received.....”

After the questionnaire was issued, replies were received. Again memoranda were issued, and then the replies came. In the light of the criticisms of the memoranda, the committee prepared the Bill. They gave way on many points on which criticisms were levelled. I do respectfully submit that if there is a genuine grievance on the position that has been assigned to the daughter or to the daughter-in-law, it can be safely left in the hands of the select committee and it will be seriously considered. The whole matter will come up again before this House. I have promised that after the Bill emerges from the select committee I will have it broadly published again. We want to have a good Act. Government have taken the responsibility, and we do not want another bad Act. It is because we do not want a bad Act that we are anxious to have the help of everybody.

If you do not send the Bill to the select committee, you will have to answer two charges. One charge will be by your own countrywomen. Am I to tell those women who are anxious to justify their existence that they will not be heard and hold property because they are women? Then, you will have to answer the charge outside India; when you ask for self-governing institutions, when you ask that democracy must be introduced, when you ask that you should have more powers, you will have to justify all these demands by showing that we show the same respect to women as anybody does in the West.

I respectfully submit that all these matters are for your consideration, and I am sure you will give them very serious consideration. (*Applause.*)

THE HONOURABLE THE PRESIDENT : Motion made:—

“ That this Council do concur in the resolution passed in the Legislative Assembly recommending that the Bill to amend and codify the Hindu law relating to Intestate Succession be committed to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of 18 Members ”.

Question put and Motion adopted.

THE HONOURABLE MR. SHAVAX A. LAL : Sir, I beg to move:—

“ That the following members of the Council of State be nominated to serve on the Joint Committee to consider and report on the Bill to amend and codify the Hindu law relating to Intestate Succession, namely:—

The Honourable Pandit Hirday Nath Kunzru,
The Honourable Mr. P. N. Sarru,
The Honourable Rai Bahadur Sri Narain Mahtha,
The Honourable Mr. V. V. Kalikar,
The Honourable Mr. Susil Kumar Roy Chowdhury,
The Honourable Sir A. P. Patro,
The Honourable Sardar Bahadur Sobha Singh,
The Honourable Mr. Hossain Imam, and myself.”

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Saturday, the 3rd April, 1943,