[Mr. Speaker]

not going to pass this Bill. If we refuse to pass a Bill, then the concerned Ordinance will be there for some time and then evaporate. The provisions of the Bill and the Ordinance are the same here. There is no want of jurisdiction. The other House has only recommended a certain thing. It is for us to accept it or reject it. Article 123 (2)(a) says that every such Ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration if six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions. Now, that House has accepted it, and this House may accept it or may not accept it. I am not able to see any other difficulty.

Shri S. S. More: My point is this.

Mr. Speaker: Order, order. How long am I to hear these things? Hon. Members must themselves make up their minds. I find it very embarrassing. I allowed hon. Members to go on exchanging things regarding this matter. I cannot say that any particular ruling will at any time give cent. per cent. satisfaction to every hon. Member. There should be an end to it. How can I go on hearing the same thing? They should be reasonable. Under these circumstances, my ruling is that there is nothing objectionable here. (*Interruptions.*)

Shri S. S. More: We are working under a written Constitution and it is the democratic privilege given to us to see that the Constitution is respected. We are not out to waste the time of the House; we are as anxious as you are not to do so.

Mr. Speaker: There is no misunderstanding on that score.

Shri S. S. More: My suggestion is this. An Ordinance has been promulgated; it has the force of an Act passed by the legislature. It has been laid on the Table of the House. Then, can we take into consideration the half-action which preceded the laying on the Table of the Ordinance? My submission is that the Appropriation Bill which was passed by this House before this Ordinance was laid on the Table is not valid.

Mr. Speaker: So long as a Bill has not been passed, it is pending. If the Bill is not pending in this House, we will assume, it is still pending in the Rajya Sabha. So, we have not finally disposed of this. When a Bill is pending, an Ordinance has been issued. Under those circumstances, there is not any technical objection. We are not going into the other matter. It is open to the House to pass a resolution approving the Ordinance. So, I think there is no objection, either of substance or of law. I shall now put the motion to the House.

The question is:

"That the amendment recommended by Rajya Sabha be agreed to."

The motion was adopted.

HINDU SUCCESSION BILL *Contd.*

Mr. Speaker: The House will now take up further clause-by-clause consideration of the Bill to amend and codify the law relating to intestate succession among Hindus, as passed by Rajya Sabha. Out of 20 hours allotted for this, 5 hours have already been availed of and a balance of 15 hours, remains.

In this connection I would like to make a suggestion and know the views of the House. There are a number of clauses to this Bill. Some clauses are not so important as the other clauses. There are a large number of amendments to the clauses which have been tabled by hon. members and a larger number of amendments have been tabled to particular clauses than to other clauses. We have been going on without any particular scheme. In many cases, whenever Bills of this kind came up, the Business Advisory Committee used to sit and allot time for particular clauses or group of clauses out of the total time allotted for the clause-by-clause consideration. That has not been done in this. Therefore, if it is the will of the House and the desire of hon. Members, while other hon. Members are speaking, some of the hon. Members who have tabled amendments and who are taking interest in this Bill, may sit together and decide which are the clauses or group of clauses for which more time has to be allotted and let me know. In that case I shall only be too willing, in accordance with the wishes of the House, to stick to that allocation. Otherwise, it will go on as it is.

The Minister of Legal Affairs (Shri Pataskar): May I make a suggestion? So far as I can see, the most important clause is clause 6. Of course, there are other clauses but they are not so important. Then the Schedule where the list of heirs is given, that might take some time. The rest of the clauses I think can be grouped together. At any rate, I think, if we can complete clause 6 by this evening, that is, taking about 5 hours more, probably the rest of the clauses may be put through during the remaining time. If clause 6 is finished today, then we can sit together and find out which clauses are to be taken together.

Shrimati Renu Chakravartty (Basirhat): I would suggest that we continue with the discussion on clause 6 for the whole day and then by evening we can get together, club together the rest of the clauses and submit to you the allocation of time.

Pandit Thakur Das Bhargava (Gurgaon): Sir, I would suggest that the Schedule is the most important part wherein the list of heirs is given. Therefore, full time should be devoted to the Schedule. Today we may be able to finish clause 6.

Mr. Speaker: As Shrimati Renu Chakravartty has suggested, let us carry on with the discussion on clause 6 for the whole day. Then in the evening, hon. Members, who have tabled amendments and have been taking particular interest in this matter, may sit together for 15 minutes and see what quantity of time will be necessary for the schedule and other clauses grouped together. I am prepared to accept that allocation.

पंडित सी० एन० मालवीय (रायसेन): अध्यक्ष महोदय, क्लाज (खण्ड) ५ में जो संशोधन ६, २७, ६१, ६२, ६३, १५८, १५९ वगैरह मव (प्रस्तुत) किए गए हैं, मैं उनका विरोध करता हूं। उनका विरोध में पुरजोर अलफाज में इस लिए करता हूं कि अगर इन संशोधनों को मान लिया जाय, तो फिर यह कानून मिताक्षरा कोपार्सनरी प्रापर्टी (समांशी सम्पत्ति) पर लागू नहीं होगा।

Mr. Speaker: Order, order. The hon. Member may resume his seat. Would it be convenient to have a common discussion on clauses 5 and 6?

Shri S. S. More (Sholapur): The question of Mitakshara family is common to both the clauses 5 and 6, because there are amendments for exclusion of Mitakshara family in clause 5 and clause 6 directly deals with Mitakshara family.

Mr. Speaker: We have now fixed that discussion on clause 6 will continue till the end of the day. Therefore, in between clause 5 and clause 6....

Shri Gadgil (Poona Central): Clause 5 is under discussion.

Mr. Speaker: We have just now agreed that we must dispose of clause 6 also by the end of the day. Under those circumstances....

Shri Pataskar: The discussion on clause 5 started yesterday and I think it has gone to a great length. If it had started only now, we could have considered the matter of discussing clause 5 and 6 together. I would, therefore, appeal to hon. Members to get over with clause 5 in an hour or more.

Some Hon. Members: Half an hour will be sufficient.

Mr. Speaker: Very well. I will strike a mean between one hour and half an hour and give about three-quarters of an hour. It is now nearly quarter past twelve. Therefore, the discussion on clause 5 must conclude by about one o'clock. Then the rest of the day can be taken up for clause 6.

Shri Gadgil: I hope to get a few minutes.

Pandit K. C. Sharma (Meerut Distt. South): I also want five minutes.

Mr. Speaker: Now Shri Malviya may continue his speech.

Clause 5.—*Act not to apply to certain properties).*

पंडित सी० एन० मालवीय: जनाबे वाला इसका मतलब यह है कि क्लाज ६ पर इसके बाद गौर होगा, इसलिए इस समय मैं सिर्फ क्लाज ५ के बारे में अपना दृष्टिकोण रखूंगा।

जैसा कि मैंने अभी कहा है, अगर इन अमेंडमेंट्स (संशोधन) को मान लिया जाय, तो फिर यह कानून मिताक्षरा कोपार्सनरी प्रापर्टी के ऊपर लागू नहीं होगा। हमारे दोस्त भार्गव साहब ने अपनी तकरीर में तमाम पुरानी दलीलों को दोहराते हुए इसी बात के खतरे को सामने रखा है कि इससे कोपार्सनरी प्रापर्टी खतरे में पड़ जायगी। वह यह जरूर कहते हैं कि स्त्रियों को हक जरूर मिलना चाहिए, लेकिन अपनी अमेंडमेंट्

[पंडित सी० एन० मालवीय]

में वह जो तरीका पेश कर रहे हैं, उससे साफ मालूम होता है कि उन के इस कथन में सचाई नहीं टपकती कि स्त्रियों को जायदाद में हक मिलना चाहिऐ । जहां तक मिताक्षरा कोपार्सनरी प्रापर्टी का सम्बन्ध है, अगर हम इस सम्बन्ध में पूरी तारीख को देखें तो हमें मालूम होगा कि यहां पर दोनों पक्षों की तरफ से पूरी बहस हो चुकी है और यह कहा जा चुका है कि मिताक्षरा कानून वैसा शुद्ध और सात्विक नहीं रह गया है, जैसा कि वह आज से बरसों पहले था । मिताक्षरा कानून में कहा गया है कि स्त्री सम्पत्ति की अधिकारिणी हो ही नहीं सकती, लेकिन हमारे विभिन्न ऋषियों और विद्वानों ने समय समय पर इस कानून में परिवर्तन किया, जिसका सबूत यह है कि मिताक्षरा के बहुत से स्कूल्ज हैं और उनमें इस बारे में अन्तर है । अंग्रेजों के राज्य में कोई हिन्दू कोड नहीं था, कोई हिन्दू धर्म-शास्त्र नहीं थे, सिर्फ हाईकोर्ट की जजमेंट्स (निर्णय) थीं । इस विषय में बड़ी अव्यवस्था और खलबली मच गई थी । अब अगर उन को सारे हिन्दुस्तान में लागू करने की ओर कदम उठाया जा रहा है तो मैं नहीं समझता कि इसमें आपत्ति की क्या बात हो सकती है । तथ्य यह है कि मिताक्षरा खानदान एक ढांचा मात्र रह गया है । हिन्दू विडोज को प्रापर्टी में हक देने और उनको रीमैरिज का हक देने से और स्त्रियों को डाइवोर्स का हक देने से, १९२९ और १९३७ के कानून पास करने से मिताक्षरा कानून की बुनियाद पर चोट पहुंचाई गई है । मिताक्षरा कानून में एक हद तक स्त्रियों का अधिकार माना गया है । कांस्टीट्यूशन (संविधान) के आर्टिकल (अनुच्छेद) १३ (१) में कहा गया है :

All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

और आर्टिकल १५ (१) में कहा गया है :

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

मिताक्षरा कोपार्सनरी प्रापर्टी के विषय में सैक्स (लिंग) की बुनियाद पर डिस्क्रिमिनेशन (विभेद) किया गया है । उसमें पुरुष को जन्म से अधिकार है और स्त्री को सिर्फ परवरिश का अधिकार है । अगर जायदाद को बांटा जाय और हिस्से में जानवर आ जायें, तो उनको भी घास चारा देना ही पड़ता है, उसी तरह स्त्रियों को भी कुछ न कुछ परवरिश करनी पड़ती है । इसके अलावा उनको कोई अधिकार नहीं है । न पिता की सम्पत्ति में उनका अधिकार है और न पति की सम्पत्ति में । कहा जाता है कि बचपन में पिता स्त्री की रक्षा करे, शादी के बाद पति उसकी रक्षा करे और पति के मर जाने के बाद पुत्र उसकी रक्षा करें । मैं पूछना चाहता हूं कि कांस्टीट्यूशन के जिन आर्टिकल्ज को मैंने अभी पढ़ कर सुनाया है, उनकी दृष्टि से क्या यह डिस्क्रिमिनेशन नहीं है ? अगर कांस्टीट्यूशन और फंडामेंटल राइट्स (मूलभूत अधिकार) को इवोक किया जाय, तो ऐसा कोई भी कानून नहीं रह सकता है, जिसमें सैक्स की बुनियाद पर डिस्क्रिमिनेशन किया गया हो । मिताक्षरा कानून में सैक्स की बुनियाद पर डिस्क्रिमिनेशन किया गया है और उसको समय समय पर खत्म किया गया है । आज हम स्त्री को पिता की सम्पत्ति में अधिकार देकर उस डिस्क्रिमिनेशन को बिलकुल खत्म कर रहे हैं ।

इसलिए यह जितने भी अमेंडमेंट्स हैं यह सब अनकांस्टीट्यूशनल (असंवैधानिक) हैं, आउट आफ आर्डर (क्रम रहित) हैं, इर्रेलेवेंट (असंगत) हैं, और नामुनासिब हैं और इनको हरगिज मंजूर नहीं करना चाहिए ।

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.-South west *cum* Bareilly Distt. North): On a point of order. If these amendments are out of order and unconstitutional, may I be permitted to ask how the Chair has admitted them ?

Shri Gadgil: The Chair is generous.

Mr. Speaker: Pandit C. N. Malviya is only appealing to the hon. Members.

पंडित सी० एन० मालवीय : अब इसके बाद यह कहा गया है कि अगर आपने इसको जरा भी छुआ तो सारे हिन्दुस्तान में खलबली मच जायेगी । लेकिन सन् १९५२ के इलेक्शन (चुनाव) में हमारी पार्टी ने इसको देश के सामने रखा था और विरोधी पार्टियों ने हमारे विरोध में प्रचार करने में कोई कसर नहीं उठा रखी थी । गांव गांव में प्रचार किया जा रहा था . . .

Pandit Thakur Das Bhargava: It is entirely wrong. The party has said and the House has said that as we are

bound by the socialist pattern of society, we are bound to give these rights to the ladies. It has never been said that these rights would be given in this way or that way.

पंडित सी० एन० मालवीय : जनाब वाला, हिन्दू कोड बिल की बातें उस समय सारे देश के सामने आयी थीं । गांव गांव में सभायें हो रही थीं और विरोधी पार्टियां यह प्रचार हमारे खिलाफ कर रही थीं कि ये लोग तो भाई और बहिन के बीच विवाह कराना चाहते हैं । तो जनता के सामने यह सारी बात थी कि इस तरह का कानून पास होगा ।

साथ ही मैं यह भी कहना चाहता हूं, जैसा कि हमारी बहिन श्रीमती स्वामीनाथन् ने कहा था, कि अगर हम स्त्रियों को पूरे अधिकार नहीं देना चाहते थे तो हमने उनको अपने साथ आजादी की लड़ाई में क्यों लिया । आज के युगपुरुष महात्मा गांधी ने स्त्रियों के लिए कहा था कि जब तक हम महिलाओं को पूरे अधिकार नहीं दे रहे तब तक हम उनके साथ बहुत बड़ा अन्याय कर रहे हैं । उन्होंने कहा था कि हमको कोई अधिकार नहीं है कि हम ५० प्रतिशत जनता को उसके उचित अधिकारों से वंचित रखें । आज हम गांधी जी की यह बात नहीं मानना चाहते । हमने अभी तक स्त्रियों को केवल वोट का अधिकार दिया है, हमने उनको आर्थिक अधिकार नहीं दिया है । हमें उनको सामाजिक और आर्थिक अधिकार देने हैं ताकि वे अपने पिता की सम्पत्ति की अधिकारिणी बन सकें ।

हमारी बहिन राजमाता जी ने कहा था कि आज बड़े-बड़े शहरों में जो हमारी बहिनें बाजार में बैठी हैं उसका कारण हमारे हिन्दुओं के कुछ इंस्टीट्यूशन्स (संस्थायें) हैं । किसी को घर से निकाल दिया जाता है और उसके ठहरने का कोई ठिकाना नहीं रहता, किसी को ससुर निकाल देता है, किसी को पति निकाल देता है और उनको कोई आर्थिक अधिकार न होने के कारण वे बाजार में जा कर बैठती हैं । यदि हम अपनी बहिनों की स्थिति सुधारना चाहते हैं तो जरूरी है कि हम उनको सम्पत्ति में पूरा अधिकार दें ।

अब यह कहा जाता है कि स्त्री को पिता की सम्पत्ति में नहीं बल्कि पति की जायदाद में हिस्सा मिलना चाहिए । इसका मतलब यह है कि पुत्र को तो जन्म से हक है, और उसको तो पार्टीशन (विभाजन) तक का हक है, लेकिन लड़की को जन्म से हक नहीं मिल सकता । जब तक उसकी शादी न हो जाये उसको हक नहीं मिल सकता । या यदि वह अपने पति के यहां जाती है तो उसका पिता की जायदाद में हिस्सा खत्म हो जाता है । मैं समझता हूं कि इस तरह का कानून बिल्कुल इम्प्रैक्टिकल (अव्यावहारिक) होगा । आप कहते हैं कि लड़की को पिता की जायदाद में हिस्सा देने से मुकदमे बाजी बढ़ेगी । लेकिन मेरे ख्याल में यह केवल एक इमेजिनेशन (कल्पना) है । हिन्दुस्तान की आम जनता तो इन बातों को जानती भी नहीं । न यहां पर आम जनता के पास कोई जायदाद है जिस पर झगड़ा होगा । इसका कुछ असर वहां पड़ सकता है जहां जायदाद है ।

आज चीन में एक बड़ा जबरदस्त उबाल आया है । वहां की हुकूमत में ५० प्रतिशत भाग महिलाओं का है । यदि हम चाहते हैं कि हमारे देश में भी ऐसा हो तो यह जरूरी है कि महिलाओं को जन्म से अधिकार होना चाहिये केवल पति की जायदाद में ही अधिकार नहीं होना चाहिये ।

मैं आपके जरिये आनरेबल मेम्बर्स (माननीय सदस्यों) के सामने एक बात और रखना चाहता हूं कि जिस पर शायद अभी तक गौर नहीं किया गया है । मजदूर और किसान वर्ग की स्त्रियों को तो आप छोड़िये क्योंकि वे तो अपने पिता और पति के साथ कन्धे से कन्धा भिड़ाकर काम करती हैं और अपनी जीविका पैदा करती हैं, लेकिन आज मध्यवर्ग की लड़कियों का एक बड़ा प्रश्न है जिनका विवाह दहेज की कठिनाई के कारण नहीं हो पाता और जिनको जन्म भर विधवा का सा जीवन बिताना पड़ता है । आज कल लड़के शादी नहीं करते, कहते हैं कि यह लड़की खूबसूरत नहीं है, काली है, इसको दहेज ज्यादा नहीं मिलेगा, यह ऊंचे खानदान की नहीं है, आदि आदि । हो सकता है कि इनमें से कुछ लड़कियां यह चाहें कि वे जन्म भर विवाह नहीं करेंगी और देश की सेवा करेंगी । उनके लिए आपने क्या सोचा है । उनके तो पति नहीं होगा और सुसराल नहीं होगी । इसलिए मेरा निवेदन यह है कि अगर हम स्त्री को इन्सान मानते हैं तो हमको उसे पुरुष के समान ही हिस्सा देना चाहिए ।

[पंडित सी० एन० मालवीय]

अगर कोई लोग मिताक्षरा कानून को कायम रखना चाहते हैं तो उनको क्लाज ६ में वह दिया गया है । केवल उसका वह अंश जो कि सड़ और गल गया है और जिसमें से कि बदबू आने लगी है, उस अंश को हटा दिया गया है । हमारे कांग्रेसी सदस्यों का भी मुझ से भिन्न मत है । लेकिन यही तो हमारी पार्टी की विशेषता है । यहां हर गुलदस्ते में अलग अलग तरह की खुशबू है । लेकिन हम अपने दृष्टिकोण अलग अलग रखते हुए भी आपस में बैठकर एक बात का फैसला करते हैं और उसके अनुसार चलते हैं । इसी प्रकार तो हमारी कांग्रेस आगे बढ़ रही है ।

अब एक अमेंडमेंट है कि इस बिल के क्लाज ५ (१) को खत्म कर दिया जाये इंडियन सक्सेशन ऐक्ट (भारतीय उत्तराधिकार अधिनियम) में हम स्त्रियों को कुछ खास हक देते हैं । जहां तक मिताक्षरा कानून का सवाल है उसमें तो इंटर कास्ट मैरिज (अन्तर्जातीय विवाह) बिल्कुल फारिन (विदेशी) चीज है क्योंकि उसमें कोपार्सनरी प्रापर्टी के बंटने का डर है । अब जो लोग इंटर कास्ट मैरिज करना चाहते हैं उनके लिए स्पेशल मैरिज ऐक्ट बनाया गया है । इस ऐक्ट में उनके अधिकारों को रिकागनाइज (मान्य) किया गया है । उसमें प्रापर्टी को बिल करने का अधिकार दिया गया है । वह ऐक्ट केवल खास हालात में ही लागू होता है । लेकिन हम उसको इस बिल से क्यों मिक्स करें । वह तो अलग चीज है । वह तो उन लोगों के लिए है जो कि स्पेशल मैरिज ऐक्ट के अनुसार विवाह करते हैं । इसलिए उनको एक्सेप्शन (अपवाद) में रखा गया है । उसमें कुछ फायदे हैं कुछ नुकसान हैं लेकिन उस ऐक्ट में जो प्रावीजन रख गये हैं वे जरूरी हैं । उनको इस कानून से नहीं मिलाना चाहिए ।

अब क्लाज ५ के सब क्लाज २ पर भी ऐतराज किया जाता है और कहा जाता है कि राजा महाराजाओं को हटा देना चाहिये लेकिन यह मांग राजा महाराजाओं की तरफ से नहीं आ रही है । हमारे देश में राजा महाराजाओं का इंस्टीट्यूशन बहुत पुराने समय से चला आता है, और उसकी यादगार अभी भी बाकी है । उनकी एक संस्था है, और अगर उनको खत्म कर दिया जावेगा तो इससे देश को कोई लाभ नहीं हो सकता । लिहाजा यह अच्छा होगा कि जो कुछ समझौता राजा महाराजाओं और सरकार के बीच हुआ है उसको हम उन दोनों के लिए ही छोड़ दें । सब क्लाज २ का आम जनता पर कोई असर नहीं पड़ता, उसको तो खास हालात के लिए रखा है । इसको रखकर हम राजा महाराजाओं के प्रति कोई बड़ा अहसान नहीं कर रहे हैं ।

इन दलीलों को हाउस के सामने रखते हुए मैं हाउस से अपील करना चाहता हूं कि हमको मिताक्षरा कानून का मोह छोड़ना चाहिए और हमें अपनी बहिनों के साथ इन्साफ करना चाहिए और हमको अपनी बहिनों को अपने बराबर का दर्जा देना चाहिए । जैसे कि हमने उनको पोलीटिकल राइट्स (राजनैतिक अधिकार) दिये हैं, उसी तरह हमको उन्हें आर्थिक अधिकार भी देने चाहियें ताकि स्त्रियां पुरुषों के बराबर आ सकें ।

Shri Gadgil: I am opposed to the entire clause 5. Sub-clause (i), in my view, has now little relevance, when you adopt the whole Bill with the remaining clauses.

So far as sub-clause (ii) is concerned, I oppose it for these reasons. In the first place, it is a feudal conception, it is medieval and is against the public policy adopted by this country during the last year or so. The agreements entered into are always to be interpreted in the context of the circumstances in which they were entered into. This is not only a principle of municipal law, but it is also a well-accepted principle of international law that treaties and agreements are always interpreted in the context of circumstances in which they were entered into. If there is a change in the context of circumstances, to that extent those international agreements suffer. Similarly, whatever might have been the political wisdom of entering into agreements in 1948-49, that circumstance, that justification, is no longer available. We are for preventing concentration of wealth in a few hands. These agreements not only bring about concentration of wealth in a few hands, but in one hand. It really is a principle of *primo geniture*. Moreover, as we consider socialism as an active principle, we will have to modify our political and economic institutions to suit the dynamic change which we are making. I am, therefore, of the view that there will be no problems, there will be nothing immoral, there will be nothing invalid if this sub-clause (ii) is completely deleted. I might confess that

to some extent, being in the Government, I am also a party to the agreements that were entered into; but, at the same time, there is a duty which we owe to the community at large. That duty varies from time to time as the morals and mind of the community change. I am therefore of the view that this is against the accepted policy of having a social order in this country. I am of the view that property relations must undergo a radical change, because property relations are reflected in the social customs in the country. If we are earnest about having a socialistic order, the least we can do is to remove sub-clause (ii).

Mr. Speaker: I will give a chance to those hon. Members who have not spoken on this Bill.

Pandit K. C. Sharma: I have given an amendment; I will take only two minutes.

My amendment No. 198 reads as follows :

> "Notwithstanding anything contained in the Indian Succession Act, 1925, the succession to property among Hindus will be governed by this Act."

If there is a Hindu marriage under the sacramental system, the man can change his marriage into a special marriage under the Special Marriage Act by going to the District Magistrate along with his wife and signing a declaration. Suppose there are two children A and B born during the earlier stage of the marriage. After the marriage is changed into a special marriage, suppose there is the unfortunate addition of C and D also. Then, A and B will be governed by the Hindu law, whereas C and D will be governed by the Indian Succession Act. In the same family with four children, if there are two different forms of succession, it does not stand to logic. There is little difference between the rights conferred with regard to inheritance under this Act and under the Special Marriage Act. I therefore, respectfully submit that succession to property among Hindus should be governed only by this Act and not the Indian Succession Act.

With regard sub-clause (ii), I have very little to add to what Mr. Gadgil has said so well; I simply endorse what he said.

Shrimati Jayashri (Bombay—Suburban): I rise to support this clause 5, which the Joint Committee has changed.

I will read out a few lines from the opinions on this Bill, circulated by the Government of India. This is from a letter from the General Secretary, All-India Women's Conference:

> "The Bill, although a step in the right direction, falls far short of what is required due to the fact that it excludes from its application the Mitakshara joint family property. As the Mitakshara Law with its various sections prevails over more than two-thirds of India, a substantial number of women will be debarred from inheriting property on the same terms as their male relatives, thus leading to discrimination on grounds of sex which is contrary to the provisions of the Indian Constitution."

We know that in the original Bill, clause 5 was restricted in its scope immensely by exempting joint family property from its operations. The rule of survivorship applies to joint family property and the Hindu society, as it is constituted today, leaves very little scope for any property being treated as self-acquired property. It is very difficult to prove that the property of the deceased was self-acquired and therefore, the women will be put to great hardship due to this fact. This Act will then do no good to the women, for whose benefit we want to bring in this legislation. On the contrary, whatever benefits they have at present under the 1937 Act will also be removed. So, I would appeal to the Members to support this clause now as it is.

As we are aware, women at present from the largest single minority in our country based on biological differences fixed by nature, they differ from those based on religion or political, who cry aloud to the heavens for the redress of their grievances. Looking to the census reports, we find that for every thousand births, there are a large number of females in the beginning; but when they reach the age of 15, the death rate amongst the females increases and ultimately, in the long run, they are reduced to a minority, the proportion being 17 to 18. What is the reason for this position? This decline is no doubt due to the unwritten conventions of

[Shrimati Jayashri]

man-made social systems in which a woman's life has been held to be relatively cheaper than a man's. Women, at present, in society are looked upon as mere chattel, property to be sold. We have the sloka in Sanskrit when Kanva, in sending Shakuntala says:

अर्थो हि कन्या परकीय एव ।
तामद्य संप्रेष्य परिग्रहीतुः ।।

She is considered as only *arth* property. In our society also, parents are very anxious to get their daughters married. Their atma rests in peace only when they get their daughters married. What do we find afterwards when they go to their parents-in-laws' houses? In our society, especially in the north, I know they give big dowries during the time of the marriage. Shri Bhagwat Jha Azad also agreed that large dowries are given. The parents do not mind giving these dowries. But, have they cared to whom they are giving away their daughters? Have they ever looked to what has happened to their daughters afterwards? I have been informed that the indebtedness of the agriculturists is largely due to this dowry system. In our society, as the hon. Minister also informed the House, due to the ill-treatment of the parents-in-laws, many women have committed suicide. I had received a questionnaire from Saurashtra. They were making investigations into the suicides committed by women. The main cause was that they were ill-treated badly by their husbands and parents-in-laws. Even after taking large dowries, we know many cases in which the girls are ill-treated very badly in their parents-in-laws' houses. That does not satisfy them. They want more dowry. They want to get rid of the girl so that the boy can again get married and get another dowry. And yet, so many of our brothers here say that the girls should get inheritance in the father-in-law's family. When she is not given a right in her own father's property, do we expect that the coparceners in the father-in-law's house will welcome her if she is to get a share in the father-in-law's property? Do you expect that she will be treated well after she marries and goes into the father-in-law's house, if she has to share with the other coparceners? Our people at present in India think that marriage is the be all and end all of women. I should say that marriage should not be a condition precedent for giving rights to women in our society. Especially when we know that we are sending our representatives to the Human Rights Commission for getting human rights, we are depriving these rights to our women, who, as I said, form nearly half of the population of this country. We are here trying to deprive her of whatever little share she can get in her father's property. Women are not saying that they should have equality in everything as Shri Tandon had said that women are trying to fight for equality in everything. I would say that at least equal justice should be done to women as laid down in our Constitution. Our directive principles also state that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall infuse all the institutions of the national life. May I appeal to the Members here who call themselves followers of the father of our Nation—Mahatma Gandhi—and quote a few words of his? He said:

> "By seeking today to interfere with the free growth of the womanhood of India, we are interfering with the growth of the free and independent spirit of India."

We know why our nation is deteriorating. We all of us talk of the old days and the puranas. But, the main cause, I should say, is the deteriorating status that has been given to the womanhood of our nation. I appeal that clause 5 be passed so that justice will be done to woman in getting her rightful share in her father's property.

Shri Pataskar: Sir, this clause is, to my mind, rather a simple clause. It has got two sub-clauses. The first is:

> "This Act shall not apply to—
>
> (i) any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954."

What has been done is, when we passed the Special Marriage Act, we have introduced section 21 by which we have made the Indian Succession Act applicable to the children of a marriage under the Special Marriage Act. Such a marriage may be between two Hindus or between a Hindu and a non-Hindu as well. It is true that at that time the

Hindu Marriage Act was not passed. The position is simple where both of them are Hindus. I do not know what complications there are where one is a Hindu and another is a non-Hindu. I should think that if both of them are Hindus, it may be found that the provisions regarding succession in the Hindu Marriage Act may be of some advantage in some cases as compared with the provisions in the Indian Succession Act. But, that Act has been only recently passed. This Act is yet to be passed. Let us watch and see how many marriages take place under the Special Marriage Act, how many will be between Hindus, etc.? Then, it will be time to consider whether we should also have some sort of a provision that whenever there is a marriage between two Hindus under the Special Marriage Act, they may have a different succession. That should be more appropriately by an amendment in that Act rather than trying to interfere in any way under this Act with the provisions of that Act.

Shrimati Sushama Sen (Bhagalpur South): May I know....

Mr. Speaker: After he resumes his seat.

Shri Pataskar: We have passed that Act only in 1954 and I do not know why when we are passing this Act we should suddenly now try to effect a change only in regard to the marriages between two Hindus under the Special Marriage Act.

There is another reason which is worth considering. I do not say I am opposed to it. But supposing certain people choose to marry under the provisions of the Special Marriage Act, is it not reasonable to assume that they do so with the knowledge that they will be governed by the provisions of that Act with respect to their property? However, I am not unsympathetic. I think it would be right to consider dispassionately if and when necessary what changes should be made in the Special Marriage Act with regard to the inheritance in respect of a marriage between two persons both of whom are Hindus. But I would request hon. Members that for the present all this complication may be avoided.

Pandit K. C. Sharma: What is the difficulty in agreeing?

Shri Pataskar: If you cannot realise the difficulty, I cannot say. This is my difficulty that that Act has recently been passed and I do not want to tamper with that Act as early as this by doing something in this Act. The Heavens are not going to fall if for sometime they continue to be governed by that Act.

Shri S. S. More (Sholapur): Will you permit me to ask one question since I did not get an opportunity to make my own submission? The hon. Minister says the Heavens will not fall.

Pandit K. C. Sharma: They do not exist.

Shri Pataskar: That is another point also.

Shri S. S. More: Under section 33(a) of the Indian Succession Act there is a ceiling that a widow shall not get more than Rs. 12,000 if the deceased husband has left lenial descendants. There is no such limit under our provisions. A deceased may have left behind him lenial descendants and a widow and a property of Rs. 1 lakh. The widow under clause 10 will get an equal share with other lenial descendants. A Hindu lady who is married under the Hindu Marriage Act is entitled to get Rs. 50,000 as her share of her husband's property, but section 33(a) of the Indian Succession Act will permit her only to draw Rs. 12,000. Once this succession has opened, how does my friend the Law Minister propose to cure it subsequently?

Shri Pataskar: That is not what I am saying.

Shrimati Sushama Sen: I just wanted to say a few words. I do want to support Pandit Thakur Das Bhargava's amendment No. 159 that this clause may be deleted. I think it would be well to delete it. No harm will be done. As has just been explained by Shri More, in cases of marriages under the Special Marriage Act, the widows will get no advantage if they come under the purview of this Act. Why not give them this advantage? Why put restrictions on them? So, I would appeal to the hon. Minister that he might consider and accept Pandit Thakur Das Bhargava's amendment. I think it is a good improvement to delete the whole clause.

Shri Pataskar: I need not go into the history of the whole of the Special Marriage Act, but I think hon. Members will be aware that the Special Marriage Act had to be passed from time to time and ultimately in the final form in which we have passed it for several reasons. People who married under that Act naturally, as we know, did so because of certain difficulties due to which they could not marry under the Hindu law in those times. The Hindu Marriage Act has also been passed subsequently and I am sure hereafter there will be no difficulty unless both of them are not Hindus. I think most such cases are expected to be married under the Hindu Marraige Act. Because we are now passing a special law of succession regarding Hindus, probably there may be some disadvantage in some cases. I grant what Shri More says. But what I expect is that after passing the Hindu Marriage Act providing for even marriages of a liberal nature, there should be no difficulty for any two Hindus to marry under that Act. That is a different matter. Under the Special Marriage Act, mostly they will be marriages between persons one of whom is a Hindu and another a non-Hindu. In the olden times probably it was more advantageous for certain people to marry under the Special Marriage Act, but now I think things have changed. In any case, what I am pointing out is that it is right that at the present moment we should not try to interfere with the inheritance in respect of people who choose to marry with open eyes under the Special Marriage Act. If at all, subsequently there will be time enough, when we have passed this Act, to consider and do the needful by a suitable amendment of that Act and not of this Act. That is my only submission.

Then there is another clause, subclause (ii) which says:

> "any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act."

This clause has been put in because, as we know, it is only after the attainment of independence that on a large scale there has been integration of States, and there are certain agreements and covenants which have been entered into between the Government and those Rulers of States, and some arrangements have been made only very recently with respect to their line of succession. It is a special thing. What it says is: "any covenant or agreement entered into by the Ruler". Naturally, if we have entered into any such agreement only as recently as 1947 or 1948 and much time has not elapsed, it is not proper that by an enactment of a general nature like this we should do something which will set at nought the agreements and the covenants which the Government of India has solemnly entered into with those people and on the strength of which they had consented to allow their States to be integrated with India. Of course, I agree that probably it is not entirely a socialist pattern or whatever you call it, but as I have been always saying, I hold the opinion that we have to proceed by the process of evolution. I do not mince matters.

Shri Kamath (Hoshangabad): Not revolution:

Shri Pataskar: When we have entered into an agreement only very recently on the basis of which something has happened, let us not set it at nought indirectly.

Shri S. S. More: Your covenant of a socialist pattern with the people is of more recent date than those covenants.

Shri Pataskar: But our socialist pattern is consistent with it. That is what I said, that I want to proceed by evolution. I know there are some people who want to go at a more rapid pace. What people like me feel is that if we run too fast we may face the danger of falling. Of course, all people may not agree, but that is the point of view from which I look at it. On the strength of the covenants we have entered into, such an important thing as integration of the old Indian States has taken place and the Rulers consented to lose many of the rights which they were enjoying. I think it is just that such a clause should be there.

Then, there is amendment No. 192 of my friend Shri A. M. Thomas which is like this, that we should add another entry (iii) reading:

> "(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the

Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin."

The facts of this case are like this. Cochin State was integrated on 30th June, 1949. The conditions in Cochin are entirely different, there is no question of a single heir there like *primo geniture*. There, a different system of inheritance prevails in which probably there is a large family called by some Southern name which I cannot very easily repeat, by which so many members are members of it, and their method of succession also is different. So, at the time the question of the integration of that State arose. the Maharaja of Cochin wrote to the Government that he would like to make a trust of certain properties called the Palace Fund. I can tell you there is nothing like a very large estate coming to a single heir because I had been to Cochin recently and I find that the income of many of the people—there are about 500 people who derive benefit out of this trust—is small. I do not think in many cases the income is likely to exceed a few hundred rupees.

1 P.M.

On the 29th June, 1949, the Maharaja issued a proclamation when he was in full power as the ruler of that State and he had obtained the sanction of the Government of India on the 28th July, 1949 for that purpose. It is practically on the basis of this understanding that subsequently the State was taken over on the 30th of July 1949. Therefore, this is practically a case similar to the cases which are covered by sub-clause (2). This may probably mean some concentration in the hands of some, but so far as this amendment is concerned, I am sure it is only meant for the benefit of a very large number of people who are the beneficiaries under a trust and the Government of India had consented to the creation of such a trust and on the basis of that such a trust would be created the Maharaja agreed to the integration of the State.

I have examined carefully all these matters and I had also a representation made to me by the Maharaja of Cochin and I find that this amendment of Mr. Thomas, who also comes from that place deserves to be accepted because it is on the lines of the provision made in sub-clause (2). I am, therefore, prepared to accept amendment No. 192.

Then there have been so many other amendments which have been criticised by some hon. Members. Some of them—if I may say so—are intended to defeat either the whole or part of the scheme of this Bill and I do not know how I can accept them. While one hon. Member wants to exclude Punjab another wants that this provision should not apply to Uttar Pradesh and Bihar and a third wants Mitakshara property to be excluded. There are similar amendments about movable property. Some of them are, of course, in the nature of alternative amendments. I do not know what hon. Members want to say about clause 6, but so far as clause 5 is concerned, I am unable to accept any of the amendments except the one I mentioned. I do not, therefore, propose to take any more time of the House in replying to them.

Mr. Speaker: I shall first put amendment No. 192 to the vote of the House. I shall also put any specific amendments which hon. Members wish me to put.

The question is:

Page 4—

after line 19, *add*:

"(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124), dated 29th June 1949, promulgated by the Maharaja of Cochin."

The motion was adopted.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*·

"(iii) any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary in accordance with law for the time being in force relating to devolution of property by survivorship among Hindus;

(iv) any property succession to which is regulated by the Madras Marumakkattayam Act, 1932; the

[Mr. Speaker]

Madras Aliyasantana Act, 1949; the Madras Nambudri Act, 1932; the Travancore Nayar Regulation (I of 1088); the Travancore Ezhava Regulation (III of 1100); the Travancore Nanjinad Vellala Regulation (VI of 1101); the Travancore Kshatriya Regulation (VII of 1108); the Travancore Krishnanvaka Marumakkattayam Act (VII of 1115); the Travancore Malayala Brahmin Regulation (III of 1106); the Cochin Marumakkattayam Act (XXXIII of 1113); the Cochin Makkattayam Thiyya Act (XVII of 1115); the Cochin Nayar Act (XXIX of 1113); or the Cochin Nambudri Act (XVII of 1113);"

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) the Punjab State."

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) lands and rural areas".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

omit lines 13 to 15.

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) agricultural land.

Explanation.—Agricultural land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures on such land."

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) agricultural lands situated in the Indian Union".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) any family governed by the Mitakshara system".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) the States of Punjab, Uttar Pradesh and Bihar".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) any State or territories in India, unless the Legislature or Legislatures of the States, as the case may be, declare by resolution in this behalf that they agree to be governed by the Act, and unless, in case of territories, the Union Government after ascertaining the wishes of the territories concerned by plebiscite or otherwise, declare by a resolution that the Act shall apply to any such territory."

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) to any Joint Hindu family concerns".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) urban properties".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) movable properties including money and ornaments".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) any joint family property or any interest in Mitakshara coparcenary properties".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19, *add*:

"(iii) agricultural land".

The motion was negatived.

Mr. Speaker: The question is:

Page 4—

after line 19 *add*:

"(iii) agricultural holdings less than 100 acres;

(iv) a family dwelling house".

The motion was negtaived.

Mr. Speaker: The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6.—(*Devolution of interest in coparcenary property*)

Mr. Speaker: The following are the selected amendments to clause 6 of the Hindu Succession Bill which have been indicated by Members to be moved subject to their being otherwise admissible:

Amendments Nos. 35, 161, 162 (same as 161), 64, 163 (same as 64), 201 (Govt.), 194, 164, 66, 166, 167, 196, 197.

Shri C. R. Chowdary (Narasaraopet): I beg to move:

Page 4—

for clause 6, *substitute*:

"6. (1) On and after the commencement of this Act no right to claim any interest in any property of an ancestor during his life time which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court.

Explanation.—In this section property includes both movable and immovable property whether ancestral or not or whether acquired jointly with other members of the family or by way of acquisition to any ancestral property or in any other manner whatsoever.

(2) On and after the commencement of this Act no court shall recognise any right to or interest in any joint family property based on the rule of survivorship; and all persons holding any joint family property on the day this Act comes into force shall be deemed to hold it as tenants-in-common, as if a partition has taken place between all the members of the joint family as respects such property on the date of the commencement of this Act, and as if each one of them is holding his or her own share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family, other than the persons who have become entitled to hold their shares separately and any such right can be enforced as if this Act has not been passed:

Provided further that nothing in this section shall affect the rights of a child in the womb on the date of the commencement of this Act and born alive subsequently.

(3) (a) On and after the commencement of this Act no court shall, save as provided in clause (b), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather, or any alienation of property in respect of, or in satisfaction of any such debt on the ground of pious obligation of the son, grandson or great-grandson as any such debt,

(b) In case of any debt contracted before the commencement of this Act nothing contained in clause (a) shall affect—

(i) the rights of any creditor to proceed against son, grandson or great-grandson as the case may be, or

[Shri C. R. Chowdary]

(ii) any alienation made in respect of or in satisfaction of any such debt;

and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case had this Act not been passed.

Explanation.—For the purpose of clause (b), the expression "son, grandson, or great-grandson" shall be deemed to refer to the son, grandson or great-grandson as the case may be who was born or adopted prior to the commencement of this Act or was in the womb at the commencement of this Act and born alive subsequently.

(4) Where a debt has been contracted before the commencement of this Act by the manager or karta of a joint family for family purposes nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Act had not been passed."

Shri Venkataraman: I beg to move:

Page 4—

for clause 6, *substitute*:

"6. (1) No Hindu shall after the commencement of this Act acquire any right to or interest in—

(a) any property of an ancestor during his life-time merely by reason of the fact that he is born in the family of the ancestor; or

(b) any joint family property which is founded on the rule of survivorship.

(2) All persons holding, on the commencement of this Act, any property jointly as members of joint family shall be deemed to hold the property as tenants in common as if partition had taken place on such commencement and as if each one of them is holding his or her share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately and any such right can be enforced as if this Act had not been passed."

Shri N. P. Nathwani (Sorath): My amendment No. 162 is the same as No. 161 moved by Shri Venkataraman just now.

Shri K. P. Gounder: I beg to move:

Page 4—

omit lines 25 to 36.

Shri V. G. Deshpande: My amendment No. 163 is same as No. 64 moved by Shri K. P. Gounder.

Shri Pataskar: I beg to move:

Page 4—

for lines 25 to 36, *substitute*:

"Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased to claim on intestacy a share in the interest referred to therein."

Shri C. C. Shah: I beg to move:

Page 4—

for lines 25 to 36, *substitute*:

"Provided that, if the deceased had left him surviving a female relative specified in class I of the

Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary of intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death on a claim being made by him, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased to claim on intestacy a share in the interest referred to therein."

Pandit Thakur Das Bhargava: I beg to move:

Page 4—

for lines 25 to 36, *substitute*:

"(2) Any custom or usage to the effect that any coparcener in a Mitakshara governed family shall not be entitled to demand partition in the life-time of any other coparcener, shall cease to have effect."

Shri H. G. Vaishnav (Ambad): I beg to move:

Page 4—

omit lines 32 to 36.

Shri Barman (North-Bengal—Reserved—Sch. Caste): I beg to move:

Page 4—

for lines 32 to 36 *substitute*:

"*Explanation.*—For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include—

(a) the interest of every one of his undivided male descendants in the coparcenary property; and

(b) the interest allotted to any male descendant who may have taken his share for separate enjoyment on a partition made after the commencement of this Act, and before the death of the deceased the partition notwithstanding;

and the female relative shall be entitled to have her share in the coparcenary property and allotted to her accordingly."

Shri Dabhi (Kaira North): I beg to move:

Page 4—

after line 36 *add*:

"Provided that if any adult male descendant has made any material contribution to the acquisition of the coparcenary property such contribution shall not be taken into consideration in computing the share of the female relative in the coparcenary property".

Pandit Thakur Das Bhargava: I beg to move:

(1) Page 4, line 31—

(i) *add* at the end:

"The interest of the deceased in the coparcenary property shall not include the interests of any son or grandson who notwithstanding any custom to the contrary shall be deemed to be entitled to claim partition against the father or grandfather in respect of coparcenary property".

(ii) *omit* lines 32 to 36.

(2) Page 4, line 31—

(i) *add* at the end:

"For clearance of any doubt it is hereby declared that the son or grandson in any undivided Hindu family governed by Mitakshara shall be deemed to be entitled to claim partition of the coparcenary property against his father or grandfather notwithstanding any custom to the contrary."

(ii) *omit* lines 32 to 36.

Mr. Speaker: All these amendments are now before the House. If hon. Members want to move any other amendments, they may kindly indicate the numbers of the amendments.

Shri Seshagiri Rao (Nandyal): I want to move amendment No. 165.

Shri Mulchand Dube (Farrukhabad Distt.—North): I want to move amendment No. 200.

Shri Krishna Chandra (Mathura Distt.—West): I would like to move amendment No. 199.

Shri Altekar (North Satara): I want to move amendments Nos. 104 and 105.

Pandit K. C. Sharma: I want to move amendment No. 202.

Pandit Thakur Das Bhargava: All the amendments in my name may be treated as moved. I have given notice of an amendment to an amendment which was circulated this morning. The Minister has given notice of an amendment, namely amendment No. 201, and I have given notice of an amendment to that amendment.

Mr. Speaker: That amendment also will be treated as moved.

Pandit Thakur Das Bhargava: There are other amendments also of which I have already given notice. I have already indicated their numbers.

Mr. Speaker: I shall announce them later.

Shri V. G. Deshpande (Guna): If they are not circulated, they should not be discussed now.

Pandit Thakur Das Bhargava: This amendment is an amendment to an amendment. So, how could it be circulated earlier?

Shri V. G. Deshpande: This is a very important clause. We should have time to consider it. So, we should discuss it tomorrow.

Pandit Thakur Das Bhargava: I shall read out the amendment now.

Shri V. G. Deshpande: The discussion has to continue tomorrow.

Pandit Thakur Das Bhargava: Why?

Shri V. G. Deshpande: We want time to consider that amendment. (*Interruptions*).

Mr. Speaker: Why should one suggestion be attacked in a thousand ways? By the time the hon. Member is called, he would have had opportunity to look into that amendment. Does the Minister want to say anything now?

Shri Pataskar: I have given notice of an amendment which is similar to amendment No. 194. Since this is a very important clause, I shall consider all the views, and reply at the end. I believe the discussion on this clause will conclude by this evening, and I shall try to reply at the end. At this stage, I do not want to say anything.

Mr. Speaker: Is there any hon. Member who has not taken part so far in the discussion on this Bill? If there is any, I shall try to give him preference by calling him now. If he goes to his constituency, the people will ask him whether he has taken part on this Bill. So, if there is any hon. Member who has not so far taken part in the general discussion, he may kindly get up now. I shall give him preference. Thereafter, I shall call the others.

Some Hon. Members *rose*—

Mr. Speaker: I shall call Shri Jhunjhunwala first.

Pandit Thakur Das Bhargava: May I make one humble submission? It is but right that all those Members may be allowed to speak. I quite agree. But I would submit that the Minister may put his amendment first, and then the amendment to that amendment also may be put, so that the whole thing may be discussed. Otherwise, if the Minister explains his amendment only by way of reply at the end, there can be no good discussion.

Shri Pataskar: I have given notice of an amendment.

Pandit K. C. Sharma: First, let the Minister explain his amendment.

Pandit Thakur Das Bhargava: You may treat my amendment to that amendment as moved.

Mr. Speaker: The amendment standing in the name of Pandit Thakur Das Bhargava to amendment No. 201 given notice of by Government will be treated

as moved. So, the following are the amendments, including amendments to amendments:

Amendments Nos. 35, 161, 162 (same as No. 161), 64, 163 (same as No. 64), 201, 194, 164, 66, 166, 167, 196, 197, 165, 200, 199, 104, 105, 202 and 213.

The amendment to amendment No. 201 or any other amendment in the name of Pandit Thakur Das Bhargava will also be taken as moved. If any other Member also moves amendments, I have no objection.

Shri S. S. More: May I make one submission? The amendment which my hon. friend Pandit Thakur Das Bhargava has moved has not been circulated to us. Since this is an important clause, I would submit that it should be circulated to us within half an hour. Otherwise, it will be difficult.

Mr. Speaker: All right. It will be stencilled immediately, and made available to hon. Members within less than half an hour.

Now, who are all the hon. Members who have not taken part in the general discussion or at any other stage, so far on this Bill?

Some Hon. Members *rose*—

Shri N. P. Nathwani: I have not spoken so far. I have moved also two amendments.

Shri Barman: I have not taken part so far.

Mr. Speaker: If there are any hon. Members who have not taken any part so far on this Bill, after it has been returned from the Rajya Sabha, I shall give them preference.

Shri C. R. Chowdary *rose*—

Mr. Speaker: I am not forbidding other hon. Members from speaking. I shall give preference to these hon. Members first. Thereafter, I shall call the other hon. Members. I shall call the hon. Member Shri C. R. Chowdary next. He will always have an opportunity, so long as the time allotted for this lasts.

Hon. Members who have not spoken so far may kindly send chits to me.

I now call Shri Jhunjhunwala. Hon. Members should be brief and try to finish in ten to fifteen minutes.

Shri C. R. Chowdary: That would mean that those hon. Members who have tabled amendments will be deprived of their chance to take part in the debate.

Mr. Speaker: I am not saying that. I am only giving some preference to those who have not spoken so far.

Shri C. R. Chowdary: That would result in Members who have sent amendments being deprived of the chance to express their viewpoint.

Mr. Speaker: If they had already had an opportunity to speak during the general discussion, they will have sometime to be satisfied with that. I cannot give all the five hundred Members a chance to speak.

Shri Nambiar (Mayuram): It is exactly on the amendments that the hon. Members will have to speak, and they will have to see that the reactionary amendments are defeated.

Mr. Speaker: In that case, they might have kept quiet at the earlier stage. I cannot satisfy all the five hundred odd Members.

Shri S. V. L. Narasimham (Guntur): It is not that way....

Mr. Speaker: Every hon. Member can give an amendment on every topic and on every clause. If he is to be called always, and all the others must keep quiet, that is something which I cannot understand.

An Hon. Member: The Minister himself has given an amendment.

Mr. Speaker: Let there be no argument now.

Shri Seshagiri Rao: My amendment No. 165 is the same as No. 66 moved by Shri H. G. Vaishnav.

Shri Mulchand Dube: My amendment No. 200 is the same as No. 64 moved by Shri K. P. Gounder.

Shri Krishna Chandra: I beg to move:

Page 4—

for clause 6 *substitute*:

"On and after the commencement of this Act and notwithstanding anything contained in any provisions of the law or custom, wife, son's wife, widow of a predeceased son and unmarried daughter shall also be members of the Mitakshara coparcenary."

Shri Altekar: I beg to move:

Page 4—

(i) lines 26 and 27, *omit* 'of a male relative specified in that class who claims through such female relative';

(ii) line 28, *omit* 'or male'; and

(iii) line 29, *omit* 'or he'.

My amendment No. 105 is the same as No. 66 moved by Shri H. G. Vaishnav.

Pandit K. C. Sharma: I beg to move:

Page 4—

for lines 25 to 36 *substitute*:

"Provided that a daughter and her children will be deemed to be members of the Hindu coparcenary in the same way, as a son or his children."

Pandit Thakur Das Bhargava: I beg to move:

Page 4—

(i) line 31, *add* at the end:

'and the rules of succession of Mitakshara law or survivorship shall not apply to such heirs'; and

(ii) *for lines* 32 to 36, *substitute*:

"*Explanation.*—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death on a claim being made by him, irrespective of whether he was entitled to claim partition or not."

Mr. Speaker: All these amendments are also now before the House.

श्री झुनझुनवाला (भागलपुर मध्य): आज चार दिन से इस बिल पर बहस हो रही है। मैंने यह देखा और सुना भी कि जब जब हिन्दू कोड बिल हाउस के सामने आया तो उस समय सक्सेशन (उत्तराधिकार) के बारे में बहुत सी बातें कहीं गयीं। यह चीज नई सोसाइटी की तरफ से आ रही है और इस पर अभी भी बहस चल रही है। इस पर बोलना कुछ बहुत नाजुक सी बात हो जाती है। अगर कोई आदमी इस बिल पर शुद्ध भाव से टीका टिप्पणी करना चाहता है और चाहता है कि स्त्रियों को अधिकार दिया जाये, लेकिन यदि अधिकार देने के तरीके में उसका इस बिल से कुछ भी मतभेद है तो कुछ माननीय सदस्य शुरू से ही उसकी तरफ से अपने दिमाग बन्द कर लेते हैं और यह समझने लगते हैं कि यह आदमी जो खड़ा हुआ है यह स्त्रियों को अधिकार नहीं देना चाहता। तो मैं उनसे यह प्रार्थना करूंगा कि मेरे बारे में भी यह न समझ बैठें कि मैं स्त्रियों को अधिकार नहीं देना चाहता।

मैं देखता हूं कि जिस प्रकार पहले हम अपनी स्त्रियों की इज्जत करते थे उस तरह से आज नहीं कर रहे है। हमारे पंडित ठाकुर दास भार्गव जी ने जब राम और सीता का उदाहरण देते हुए आजकल की स्त्रियों का जिक्र किया था तो हमारी बहिन उमा नेहरू जी ने उसका जो जवाब दिया था मैं उसके साथ हूं। उन्होंने कहा था कि इस बारे में भी दोष की भागी स्त्रियां नहीं बल्कि पुरुष हैं। मैं समझता हूं कि हमें यह बात माननी चाहिए।

मैं यह सारा बिल पढ़ गया हूं। अभी हमारे भाई मालवीय जी बड़े जोश के साथ बोल रहे थे और कह रहे थे कि हमारे संविधान के अनुसार स्त्रियों को समान अधिकार मिलने चाहिये और उनको यह मिलना चाहिये, वह मिलना चाहिये ताकि वे स्वतन्त्र भारत में अपना जीवन अच्छी तरह से निभा सकें। यह नहीं होना चाहिये कि उनको अपने माता, पिता, भाई या पति पर निर्भर होकर रहना पड़े। वे उनके मुंह की तरफ देखें, ऐसी बात नहीं होनी चाहिए। मैं समझता हूं कि जो लोग ऐसा कहते हैं कि इस वर्तमान हिन्दू उत्तराधिकार विधेयक से स्त्रियों को काफी अधिकार मिल जाता है, उन्होंने इस बिल को ठीक तरह से समझा नहीं है। इससे वास्तव में स्त्रियों को कुछ भी अधिकार नहीं मिलता है, अलबत्ता इस

बिल के द्वारा उनके मन में इस तरह की सेंटिमेंटल (काल्पनिक) खुशी हो आती है कि बाप के मरने के पश्चात् उसकी सम्पत्ति में हमको भी अधिकार प्राप्त रहेगा जसा कि पुत्र को प्राप्त है । इसके बिपरीत हमारी स्त्रियों को शास्त्रानुसार जो अधिकार इस समय प्राप्त हैं और जिस तरीके से लड़की के माता, पिता और उसके भाई लड़की से प्रेम भाव रखते हैं और जो उसकी हर प्रकार से मदद करना अपना वालियंटरी (स्वैच्छिक) कर्तव्य समझते हैं, उसमें इस बिल के पास हो जाने से एक कड़ुवापन आ जायगा । यह बिल स्त्रियों को कोई भी अधिकार नहीं देता है और यदि स्त्रियों को कोई तकलीफ होती है तो वह बाप के घर में नहीं बल्कि पति के घर में होती है ।

जब डाइवोर्स बिल (विवाह-विच्छेद) यहां पर पास हो रहा था तो मैंने उस समय उसका विरोध किया था और मैं चाहता था कि डाइवोर्स बिल लाने से पहले स्त्रियों को सम्पत्ति में अधिकार दिलाने के विषय पर विचार कर लिया जाता और उसके तय हो जाने के बाद डाइवोर्स बिल लाया जाता ।

जब मैं इस हिन्दू उत्तराधिकार विधेयक को पढ़ता हूं तो ऐसा मालूम होता है कि मानों सिर्फ मुंह पोंछी की गई हो और वास्तव में इसके द्वारा उनको कोई अधिकार नहीं मिलता है । आप हमको यह बतलाइय कि इसमें कम्पलसरिली (अनिवार्यत:) स्त्रियों को किस अवस्था में अधिकार मिल सकता है । आप कहते हैं कि लड़की को अधिकार देना पिता के ऊपर निर्भर है, भाई के ऊपर निर्भर है और माता के ऊपर निर्भर है, तो उस हालत में उसका अधिकार ही क्या रहा । पिता अगर चाहेगा तो एक वसीयत करके अपनी पुत्री के अधिकार को खत्म कर देगा । मेरे कहने का मतलब यह है कि बाप और भाई जब यह देखगे कि लड़की हमारी सम्पत्ति में से हिस्सा ले जायगी तो जितना भी उनका प्राकृतिक प्रेम है और लड़की को हर प्रकार से सहायता करना जो वह अपना कर्तव्य समझते हैं, वह समाप्त हो जायगा और शुरू ही से उनकी यह चाल होगी कि किसी तरह से लड़की को कुछ न मिल पाये । इस चीज की आशंका हमको इस बिल के कारण मालूम होती है और स्त्रियों के सिवाय नुकसान के कोई लाभ होता नजर नहीं आता ।

श्री पाटसकर : पिता अपनी लड़की पर इतना क्यों बिगड़ जायगा ?

श्री झुनझुनवाला : मंत्री महोदय अभी इतने बूढ़े नहीं हो गये हैं कि वे यह न समझ सकें कि पिता किस तरह से बिगड़ जायगा । इसके जिम्मेवार उनका यह बिल है । वह जो एक प्रतिबंध लगा कर उसको सम्पत्ति में हिस्सा दिलाने की चेष्टा कर रहे हैं, इसका असर यह पड़ेगा कि अभी तक जो लड़की के प्रति उसके बाप और भाई के दिल में प्राकृतिक प्रेम भाव होता है, वह खत्म हो जायगा । मैं तो चाहता हूं कि स्त्रियों को सच्चा और वास्तविक अधिकार प्राप्त हो और उसके लिए बजाय पिता के वहां सम्पत्ति दिलाने के उसको ससुराल में पति के घर में सम्पत्ति और अधिकार दिलाने का सुझाव हम लोगों ने दिया था और आज भी उसके लिए कहते हैं ।

अभी कल या परसों जब इस विधेयक पर हमारे श्री एस० एस० मोरे बोल रहे थे तो उन्होंने पिताओं भाईयों को और स्त्रियों को अधिकार देने के सम्बन्ध में नीच प्रकृति वाला बतलाया था और उनके अनुसार वे लोग जो कि इस हिन्दू उत्तराधिकार विधेयक का विरोध करते हैं वे प्रतिक्रियावादी हैं और प्रोग्रेसिव (प्रगतिशील) नहीं हैं लेकिन मैं उनको बतलाना चाहता हूं कि उनका ऐसा खयाल करना बिलकुल गलत है । आप हमको पहले यह बतलाइये कि इस बिल से एक लड़की को स्वतन्त्र रूप से किसी भी स्टेज (प्रक्रम) में क्या कुछ मिलता है ? असल म तो तकलीफ एक लड़की को होती है वह उसको अपने पिता के घर में नहीं होती बल्कि ससुराल में जाकर होती है और इसलिए अधिकार दिलाने की बात वहां के लिए होनी चाहिए थी । अब डाइवोर्स बिल पास हो जाने से यह होगा कि पुरुष बूढा होने पर भी यह समझ कर कि चलो अब तो तलाक का कानून पास हो ही गया है तो क्यों न मैं दूसरी स्त्री को घर ले आऊं और दूसरी शादी करने के लिए वह पचास तरह के बहाने बना करके पहली स्त्री से छुटकारा प्राप्त कर लेगा और इसलिए मैं कहूंगा कि यदि आप यह समझते हैं कि स्त्रियों को सम्पत्ति और धन पर अधिकार हो तो शेडयूल (अनुसूची) के क्लाज (खण्ड) १ में डाटर (लड़की) का नाम रखें उसमें आप यह कर दें कि "सन एंड वाइफ" (लड़का तथा पत्नी) पिता यदि मरे तो पतोहू को भी उसी प्रकार से हक प्राप्त हो और अगर ऐसा हो जायगा तो जितनी भी खराबियां इस डाइवोर्स से फैलने वाली हैं वे नहीं फैल पायेंगी । अगर सुसराल में लड़की को सम्पत्ति में अधिकार प्राप्त रहेगा तो यह जो डाइवोर्स का बदचलन

[श्री झुनझुनवाला]

पुरुषों द्वारा अनुचित लाभ उठाये जाने की आशंका है वह बहुत कम हो जायगी क्योंकि उसको भय बना रहेगा कि मेरी सम्पत्ति में उसका अधिकार है और अगर कहीं कोई डाइवोर्स हो भी जायगा तो स्त्री उसकी सम्पत्ति में से अपना अधिकार ले लेगी और वह अपना शेष जीवन सुखमय तरीके से व्यतीत कर सकेगी। आज हकीकत यह है कि हमारे हिन्दू समाज में लड़कियों को पिता के घर में कोई तकलीफ नहीं होती ह और हर कोई पिता और लड़की के भाई चाहते है कि वह अच्छे से अच्छे घर जाय और उसका वैवाहिक जीवन सुखमय हो और शादी हो जाने के बाद भी उसका अपने मायके वालों के साथ प्रेमपूर्ण सम्बन्ध बना रहता है और उसके भाई और बाप के यहां से हर तीज त्यौहार पर कुछ न कुछ आता रहता है। और नाती होने पर मायके वालों के यहां से काफी सामान उसको मिलता है। अलबत्ता मैं यह मानता हूं कि जहां वह शादी होकर जाती है और जिस घर में बहू बन कर जाती ह, वहां पर उसके कोई भी अधिकार नहीं हैं और ससुराल में उसको सम्पत्ति में अधिकार दिलाने की व्यवस्था की जानी चाहिये।

कल मोरे साहब और मैं आपस में बातें कर रहे थे तो उन्होंने कहा कि इस बिल में है ही क्या जो आप इतना शोर मचा रहे हैं।

"This Bill is nothing but a fraud on women".

यह तो केवल एक सेंटिमेंटल (काल्पनिक) चीज हो गई है कि लड़कियां यह खयाल करने लगेंगी कि हमको पिता के घर में हिस्सा मिल गया है लेकिन होगा यह कि इससे हमारे बसु साहब के वकील साथियों की बन आयेगी और मैं पूछता हूं कि अगर लड़के पिता से सम्पत्ति में बंटवारा करवा लेते हैं और यह कह कर अलग हो जाते हैं कि हमारा हिस्सा हमें दे दो, हम अपना अलग कमायेंगे और खायेंगे तो उस हालत में बेचारी लड़की क्या करेगी ? इस बिल के बन जाने से लड़कियों को तो कुछ नहीं मिलेगा, अलबत्ता वकीलों की बन आयेगी और धड़ाधड़ लोग उनसे वसीयतनामे तैयार करवायेंगे। अगर कोई पिता वसीयत करके लड़की को डिसइनहैरिट (दायभाग से वंचित) कर देता है तो वह कहां रहेगी और क्या करेगी ? अगर विवाह हो जाने के पश्चात उसके पति ने उसके साथ दुर्व्यवहार किया तो वह क्या करेगी और उसकी क्या स्थिति होगी ?

जैसा हमारे पूज्य टंडन जी ने और पंडित ठाकुर दास भार्गव ने कहा कि हमको ऐसी व्यवस्था करनी चाहिये ताकि स्त्रियों को सम्पत्ति में वास्तविक अधिकार मिले, वह सम्पत्ति की अधिकारिणी हों और सचमुच में वे अपना स्वतन्त्र जीवन व्यतीत कर सकें, न कि केवल एक सेंटिमेंटल चीज को लेकर वह यह समझने लग जायें कि हमको कुछ मिल गया है जब कि उनको मिल कुछ भी नहीं रहा है। इस बिल में जो क्लाजेज (खण्ड) दिये गये हैं और उन पर जो अमेंडमेंट्स (संशोधन) आये हैं, शाह साहब ने दिये हैं, नथवानी साहब ने दिये हैं, भार्गव साहब ने दिये हैं और खुद मिनिस्टर साहब ने दिये हैं, उनको मैं पढ़ रहा था तो मुझको ऐसा लगा कि यह सब झगड़े की बातें और हैं सिर्फ सालिसिटरों (अभ्यार्थियों) का घर भरेगा।

इसमें जो क्लाजेज हैं जिनमें प्रापर्टी (सम्पत्ति) का जिक्र है, उनमें स्त्रियों की तीन प्रापर्टीज का जिक्र है। एक तो स्त्रीधन है, दूसरी वह जो कि वह अपने पिता से इन्हेरिट करती है और तीसरी वह जो वह अपने पति से इन्हेरिट (दायभाग) करती है, या कहीं और से लाती है। इस जगह पर झगड़ा यह है कि जो वह इन्हेरिट करती है पिता के यहां से वह पिता के घर में जाय, भाई को मिले और उसको मिलने के बाद चाहे किसी और को मिले। मैं आपसे यह पूछता हूं कि जिस प्रकार से मिनिस्टर साहब ने बिल को ड्राफ्ट (प्रारूप) किया है, उसमें कैसे सम्पत्तियों को अलग अलग किया जायगा, कौन सी कौन प्रापरटी है कैसे पता चलेगा ? इसमें केवल लिटिगेशन (मुकदमेबाजी) ही तो बढ़ेगा। जिस प्रकार से यह बिल ड्राफ्ट हुआ है उससे एक दूसरे में द्वेष ही तो बढ़ेगा। मैं समझता हूं कि यदि आप वास्तव में बहनों को कुछ अधिकार देना चाहते हैं, सम्पत्ति का मालिक बनाना चाहते हैं, तो जैसा मैं कहता हूं उस पर ध्यान दीजये। स्त्रियों के साथ यदि कुव्यवहार होता है तो विशेष रूप से पति के घर में होता है, पिता के घर में नहीं होता है, इसलिये आप सब बातों को छोड़कर उनको पति के घर में, फादर-इन-ला (ससुर) के घर में हिस्सा दीजिये, जिस तरह से फादर-इन-ला के यहां लड़के को मिलता है उसी तरह से बहू को भी मिले।

इस विधेयक में जो भी कानूनी बातें हैं वह मैं पंडित ठाकुर दास जी पर छोड़ता हूं। मैं चूंकि जेनरल डिस्कशन (सामान्य वादविवाद)

के समय नहीं बोला था इसलिये मैंने प्राय: जेनरल (सामान्य) बातें ही कहीं हैं । अब समय भी नहीं है । अध्यक्ष महोदय ने घंटी बजा दी है ।

Shri D. C. Sharma (Hoshiarpur): I have listened with a great deal of interest to the speech of the hon. Member who just preceded me, and I felt as if I was reading some pages of a novel by John Galsworthy, named, *The Man of Property*. I do not know whethr the arguments he has advanced are for or against the Bill. But the arguments show the proprietary type of mind against which the whole world is fighting at this time.

This movement is not only in India; but it is seen in every Asian and African country also. What is happening in China? In China women are being treated on par with men in so many ways. We may say that China is practising democracy of a kind with which we may not agree in toto. But, there is Egypt, an old country, a country which traces its history to prehistoric times, a country which is primarily agricultural, a country of tillers; what is happening there? In Egypt also, they have made no distinction between man and woman so far as division of agricultural property is concerned. There was a great deal of talk about agricultural property on the floor of this House. I say the voice of vested of interests, the voice of man of property is one kind of voice and that voice has lost all its authenticity in the context of the times which we are having in India today.

Mr. friend, Shri Jhunjhunwala placed his arguments on a very lofty moral plane and I compliment him on that. He talked about *prakrithic prem*, natural affection and he talked about duty. Since this natural affection is undergoing diminution on account of social forces that are working in the world today, since the conception of duty is not as paramount a consideration these days as it should be, it is natural that to make good these deficiencies, we should bring in social justice. Social justice can be brought in two ways; one, by education and the other by legislation. I find that in this Bill and in the whole Hindu Code Bill both these processes are visualised. We have taken the Bills one after the other so that the provisions of the one could sink into the minds of the people before we proceed to the other. This instalment process is a concession to the educational process that we are undergoing in order to come to grips with this change.

[MR. DEPUTY-SPEAKER *in the Chair*]

I ask one question: Is it a revolutionary change that we are effecting? As somebody put it, are the Heavens going to fall because of this change? Some of my friends say that Heavens will fall. I may say that Heavens may fall on their heads and not on the heads of others. Heavens are not going to fall. As our Minister of Legal Affairs has said, we are undergoing.....

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): Hell will fall.

Mr. Deputy-Speaker: Order; order. If they happen to fall, they will fall on everybody here.

Shri D. C. Sharma: My friend says, Hell will fall, probably because he loves it. But I love Heaven. Because we are having social justice, I do not fear either Hell or Heaven.

I was saying that we are not doing anything radical or revolutionary. As the Minister of Legal Affairs has said, we are doing something which is evolutionary and, therefore, the forces which had validity at one time and which have no validity now should not frighten them and they should welcome this Bill. I think somebody here said that it is a fraud upon women. I think, it is a great abuse of words to say that it is a fraud on women. I think it to be otherwise. Apart from other things, this Bill is going to cut at the very root of many social evils that have crept into our society. I think the greatest source of evil that we have in our society is the dowry system. People have been saying here that the North is a greater victim of the dowry system than other parts of India. I come from the North and I do not see why the North should be singled out for this kind of treatment. I think this dowry system is prevalent in all the States of India. We have had so many Private Members' Bills sponsored by our women Members saying that this dowry system should be abolished. If this Bill does not do anything else but cuts at the root of the dowry system, I am sure that it would be a measure of great social upliftment and significance. Of course it is going to do many other things. It has been said

[Shri D. C. Sharma.]

that women are properly treated in the homes of their parents but that they do not always get the right kind of treatment in the homes of their fathers-in-law. I do not want to enter into the controversy. I am a father as well as a father-in-law. Looking at the evolution of our society for ages, I can say that sometimes, the father is as much to blame as the father-in-law. Sometimes, the father may be guilty of something of which the father-in-law may not be guilty. There are fathers-in-law who treat their daughters-in-law with as much affection as their own daughters. There are also some fathers who do not treat their daughters with as much affection as they should. This distinction between father and father-in-law for the purpose of argument is imaginary and illusory. Whether a daughter has to live at the expense of the father or in the house of the father-in-law, we must devise a system by means of which she can live comfortably, independently, a life of social equality. This Bill gives our sisters and daughters and our womenfolk that kind of thing.

We have conceded political liberty to the women. When I came to this House during the first session, one Minister said something about this. I do not want to mention his name. He said that the results of his election were so mainly due to the women voters. So, we have given them political equality. We have also given them social equality. I do not understand why economic equality, which logically follows these, should be denied to them. Some of my friends here are very great lawyers and I bow my head in respect to them. They are very well versed in the legal lore. They can dot the i's and cross the t's and by doing so they forget the whole sentence. If social equality is there, economic equality must be granted. Unless economic equality is given, our women cannot trace the struggle of life successfully. It has been said that marriage is the career for women. There are women who do not want to go in for marriage but who want to dedicate themselves to some cause or service. We have got to make some provision for them also so that they may lead a life of independence. Nothing is more important than freedom but freedom is an omnibus word. Even if we do not give women a great deal of property, wealth or other things, we are giving them freedom by this law and it is an asset. So many friends have told me that, when this law is passed it will lead to many law suits and trouble on a very large scale. They see trouble in every good thing. If there is trouble on account of a good thing, it must be faced boldly. So, I say that by this measure we shall be giving Indian women the rightful place in the home of her father as well as her father-in-law; we will be making her an independent and self-respecting citizen of India, a citizen who enjoys all those privileges which we enjoy. Distribution of property is one thing which is being dealt with, but, I believe that this Bill gives many more advantages to the women and I welcome them. I can assure you that it gives psychological and imponderable advantages to the women who belong not only to this or that particular organisation but to the Indian womanhood all over India. I, therefore, welcome this Bill and support clause 6.

Shri N. P. Nathwani: I rise to support the two amendments Nos. 162 and 194 which stand in the names of myself, Shri C. C. Shah and Shri R. Venkataraman. The former seeks to abolish the Mitakshara joint family system altogether. The Joint Committee made a very important change in the Bill, as it was originally introduced. It is clause 6. By far it is the most important change that has been made by the Joint Committee. The Rajya Sabha has also passed it. That provision seeks to give shares to the daughter and other female heirs in the interest of a deceased coparcener in the joint family property. I am in favour of giving these rights of succession to female relatives of the joint family but I do not like the manner in which it is sought to be done.

The relevant provision is contained in clause 6. The hon. Minister himself has explained the scheme of that clause. His exact words while moving the motion for consideration of this Bill in this House were :

> "The underlying idea of clause 6 is that, while trying not to disrupt the joint family and the Mitakshara type, by this Bill, a daughter or a female heir under clause 1, would also get a proper share in the property of the deceased coparcener."

So according to the hon. Minister this clause 6 contemplates to achieve two results namely to prevent the disruption of the joint family of the Mitakshara system as also to secure a proper share in the property to female heirs specified in class I.

Now, this is something which is not possible to harmonise. If you want to preserve the Mitakshara joint family system as it is, then it is not possible to secure a proper share to females, and if you want to give proper shares to female heirs, the straight, logical and the best course is to abolish the Mitakshara system altogether.

I want to illustrate my point of view by taking the provisions of this very Bill. I will try to show how this very Bill makes serious inroads on the doctrine of coparcenary as it exists today, how the provisions of this Bill are a departure from the existing system of coparcenary and how this doctrine of coparcenary is almost eaten away leaving merely the husk or the shadow of the coparcenary system as it is known today.

In considering this point, it is worth remembering what are the main characteristics or salient features of the coparcenary system. It is said that in coparcenary system only the males take share in the property and that the females do not get any share or interest in the property, except of course by way of maintenance and marriage expenses in the case of daughters. Then it passes by survivorship.

Take the provisions of this very Bill and see how far these principles are being observed? That is, in order to give right to the female heirs, you have to make provisions against these principles which are known to be the cardinal features of coparcenary system.

Then again, it is said that the sons and other male issues take interest by birth. That is the test of coparcenary system. Now, as clause 6 stands, this right by birth has been negatived. Even the hon. Minister himself has accepted that as the Explanation to clause 6 stands today, it is a negation of this principle of taking interest by birth.

Let us then take the third test of coparcenary and that is, that a coparcener cannot dispose of his interest by will. Now, we have provided for this right of testamentary disposition to a coparcener. The provisions are contained in clause 32.

Then there is according to me a very strange provision, because as I read and as I construe this Bill, a mode of forming joint property by inheritance in the case of sons is done away with. The hon. Minister for Legal Affairs has just now come to the House and I would request him to consider seriously what I am submitting on this aspect of the case. It is a well-known principle that sons, grandsons and great-grandsons succeed to the property of a Hindu under the Mitakshara system as joint tenants. In their hands the property becomes joint family property and both the sons, if there are two, who succeed, become coparceners. Now, if you turn to clause 21 of this Bill, what we find is this. It says :

> "If two or more heirs succeed together to the property of an intestate, they shall take the property.... ....as tenants-in-common and not as joint tenants."

So, clause 21 as it stands today does away with ancestral property. In the hands of the sons, the self-acquired property which is succeeded to by them, will not partake of the nature of joint family property. Sir, in order to reinforce my argument I want to read one passage from *Mulla's Hindu Law*, because it explains the present position. On page 23, in para 31 this is what is stated :

> "According to the Mitakshara school, two or more persons inheriting jointly take as tenants-in-common except the following four classes of heirs" :

And the first exception is :

> "Two or more sons, grandsons and great-grandsons succeeding as heirs to the separate or self-acquired property of their paternal ancestors."

So, under the existing law these sons succeed as joint tenants. On the next page an illustration has been given by the learned Commentator. It is like this if a Hindu who is possessed of a separate property dies leaving two sons A and B, then according to the Mitakshara school, A and B inherit as joint owners, strictly speaking as coparceners. I have been labouring this point to show that under the Bill as it stands, this form of coparcenary property is done away with. I am trying to emphasise this point and show that there are serious encroachments made on the coparcenary system as it exists today and, therefore, by this Bill you are not trying to prevent disruption of the joint family system. In fact, you have

[Shri N. P. Nathwani]

undermined all the basic or fundamental principles of coparcenary system and by this provision in clause 6 you will not be able to achieve your other object also, namely, to secure "due" share to the female heirs.

If clause 6 stands as it is today, under the Explanation, the sons will go for partition, take away their shares and thereby try to reduce the property which would be available for distribution amongst the heirs of the father.

I may also say this in passing, that the scheme as it is contemplated under clause 6 will lead to several anomalies. One of the anomalies is this, that whereas a daughter who receives a share in the interest of a deceased coparcener takes the property absolutely, the sons who will take it either by survivorship or by way of intestate succession, will take it as ancestral property. So, the daughter is free to dispose of the property in any manner she likes, but the son who gets the property is not free to do so. Having regard to this anomaly and various other anomalies, the Rau Committee pointed out that we are driven from point to point and we do not come to any logical halting place till we decide to abolish the coparcenary and the principle of survivorship and assimilate the Mitakshara school of law to that of Dayabagha. Therefore, my submission is that the straight course would have been to delete or to abolish the whole coparcenary system and thereby we would have secured certain advantages. But it is said that there is deep sentiment and respect for this Mitakshara joint family and that comes in the way of doing away with it. However, you know that its abolition will not be against the spirit of the Smritis, because as far as back as the 15th century, even Jeemutavahana, the author of Dayabhaga, did away with this type of coparcenary, relying on a particular text of Manu. So, it could not be said that it is because of the influence of the Western civilisation that we are moving in the direction of abolishing this coparcenary system. There is nothing alien or foreign to the genius of Hindu law or Hindu race in abolishing this Mitakshara system. If we do away with it, our Hindu Code will be nearer to the uniform civil code which all of us are looking forward to.

There is one more thing, and that is about the position of widows. In clause 6, there is an amendment proposed, and it is for the deletion of the explanation. The result would be that the female heirs would get less in the property of the deceased coparcener. In the case of one female heir, namely, the widow, that would adversely affect her interests. When the Bill was originally introduced it was provided that this Bill should not affect the coparcenary property. Therefore, in a coparcenary, the widow of a deceased coparcener took an interest equal to that of her husband under the Hindu Women's Right to Property Act. Under the Hindu Women's Right to Property Act, her position is assimilated to that of her husband. If there is a father and there are two sons, and if the father dies leaving a widow and two sons, the widow would get one-third share, whereas if we do away with the explanation, the father's share would be one-third and that one third would be distributed in three parts, amongst the two sons and the widow. Therefore, the widow would receive one-ninth. That is why I was not willing to delete the explanation. It is said that under this Bill they would be getting an absolute estate, but that was irrespective of these provisions. So far as the widow's interest was concerned, under the Bill as was introduced, she would have taken a larger share as I have just now pointed out. Then under clause 16 of this Bill, her interest would have automatically become an absolute one. These are the reasons why I was reluctant to accept the suggestion for deleting the explanation.

Then I want to say a few words about amendment No. 194. It seeks to secure to the daughter and other female heirs their just share, or, if not a just share, a higher share in the property left by the deceased coparcener. As clause 6 stands now, it is possible to argue that even in respect of the share of the deceased in the coparcenary, the share of the daughter would be less. In determining the share, we will have to determine the number of heirs and even those sons who have separated would be included in the number of total heirs, thereby reducing the share of the daughter or any other female heir. By the proposed amendment No. 194, it has been made clear that the number of sharers will be less because it excludes those sons who have separated from the father after having received their due share in the coparcenary property. Therefore, if our first amendment is not acceptable—and I know the fate which

it would meet in the House—I recommend the other amendment for acceptance by the House.

Shrimati Sushama Sen : Clause 6 is the most important clause in the whole Bill. There are many amendments. There is also a new amendment which has been brought forward by the Minister in charge, and that is amendment No. 201. It reads as follows :

'for lines 25 and 36, *substitute*—

"Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship".

There are also explanations given under the amendment.

As we have just heard from the last speaker, this means that the females are going to get less than what is provided in the original Bill. But there seems to be so much confusion and so much opposition that perhaps I would congratulate the Minister in charge for having brought this amendment, although it means that the daughter is going to get less. But it really pained me very much to hear some of the observations made in this House. After all, women are not clamouring for their rights. They have been given to them by the Constitution and so it is their claim that they should have an equal share with the son. So, it is nothing new. This matter has been going on for the last 16 years and many committees have been appointed. There have been Law Commissions also. The Rau Committee of course recommended only half-share, but at the same time the Rau Committee did also recommend for the abolition of the Mitakshara system. If the Mitakshara system can be done away with, all the trouble would be avoided. But it seems that the Government is not prepared to do away, at present, with the Mitakshara system. I believe that under the Dayabhaga system the daughters will get much more. In fact, it was pointed out to me that they would be getting one-fifth, whereas under the Mitakshara, they would be getting only 1/25th share of the property. As I said, women do not want to wrangle over every penny as it were. During the last elections, more than half the voters were women and the Bill is for removing the disabilities of nearly 6 crores of Hindu women. So, it is up to my friends here to consider whether they should give this right to the women or not. It is not a charity that we ask of you. It is really the right of the women. As was explained by the Minister in charge of this Bill, the Select Committee of the provisional Parliament had provided for the immediate disappearance of the Mitakshara system. As I have said, if this system goes, then it would be much easier. But till the time it goes, perhaps it would be judicious on our part to accept this new amendment which has been brought forward by the Minister.

The last speaker pointed out that women will break the development of property. Well, considering the socialistic pattern of society coming in, I would think that there would be no property left for anybody and there would be more debts than anything else. So, that is not the point. The principle has to be accepted and I do not see why there should be all this opposition to it. I was very pained to hear from our veteran friend, Pandit Bhargava, that only sons take interest in the father, and so he should inherit his property. It is quite a wrong proposition. The daughters as well as the sons take interest in the parents not the sons alone. In many cases, the daughters do much more for the parents than the son. I claim this .....

Shri Bhagwat Jha Azad (Purnea *cum* Santal Parganas) : Let it be equal.

Mr. Deputy-Speaker : Perhaps both may be right in their spheres.

Shrimati Sushama Sen : Then, there is another proposal that the daughter should inherit the father-in-law's property and not the father's property. At one time, I was also inclined that way, but after considering the matter throughly, I think that it is not a sound proposition. After all, the father has tender feelings for the daughter more than the father-in-law. I also think that there will be great opposition to the daughter getting married, if she is to inherit the father-in-law's property. Therefore, I have give up my original idea that the daughter should inherit the father-in-law's property. Therefore, whatever we get, we will be content with it. I am sure, the women generally will agree to

[Shrimati Sushama Sen]

accept the new amendment brought forward by the hon. Minister, because I believe that it will ease the situation. There will be less litigation and there will be much less quarrel between the brother and sister. There is also the question about the brothers having a sort of animosity for the sister, if the sister gets a share in the father's property. I do not agree with that view at all. I think the sisters are always welcome in the brothers' houses.

श्री बो० डी० पांडे (जिला अलमोड़ा उत्तर पूर्व) : इस हिन्दू उत्तराधिकार विधेयक पर जो यहां दो रोज से वादविवाद चल रहा है उसको मैं ध्यानपूर्वक सुनता रहा हूं ।

मेरे निर्वाचन क्षेत्र के लोगों ने इस बिल का विरोध किया है लेकिन म यह चीज स्पष्ट कर देना चाहता हूं कि मैं स्त्रियों को अधिकार दिये जाने का विरोधी नहीं हूं । मैं स्त्रियों को उनके पतियों की सम्पत्ति में पूर्ण अधिकार दिलाये जाने के पक्ष में हूं । वैसे यह हर एक को मालूम है कि आज स्त्रियां हमारे घरों की महारानियां होती हैं और गृहलक्ष्मियां कहलाती हैं और हम लोग और हमारे लड़के जो भी पैसा कमा कर लाते हैं वह सब इन्हीं देवियों के हाथ पर रख देते हैं और घर का सारा काम काज वे ही चलाती हैं और मानना पड़ेगा कि वे बड़े सुचारू रूप से चलाती है । आज इस बात से कौन इंकार करेगा कि हमारे घरों में लड़कियों और लड़कों के लालन पालन में कोई भेदभाव नहीं किया जाता बल्कि देखने में तो यह आता है कि लड़कियों को उनके मां, बाप कुछ ज्यादा प्यार करते हैं और जैसा कि मेरी एक बहन ने यहां पर कहा था कि लड़कियों का लालन पालन ठीक कहीं होता है और उनका जीवन बड़ा दुःखमय व्यतीत होता है, उसमें कोई मार नहीं है और ऐसा कहीं नहीं होता, ऐसा दुर्जन पिता शायद ढूंढ़ने से एक आध मिल जाय जो इस तरह का बुरा व्यवहार अपनी लड़कियों के साथ करता हो, वरना आम तौर पर यही देखने में आता है कि लड़कियों का लड़कों के समान लालन पालन होता है और उनको हर तरह से सुखी रखने की कोशिश की जाती है । हर मां, बाप की यही ख्वाहिश और कोशिश रहती है कि किसी तरह मेरी लड़की के हाथ पीले हो जायें और वह अच्छे घर जाय और उसका वैवाहिक जीवन सुख से बीते और अगर दुर्भाग्यवश ससुराल में उसको सुख नहीं रहता और दुःख में रहती है तो पिता उसको अपने पास बुला लेता है । मैं समझता हूं कि ऐसा कोई एक आध ही दुर्जन हिन्दू कुटुम्ब होगा जिसमें लड़कियों को दुःख दिया जाता होगा । सज्जन पुरुष कभी ऐसा काम नहीं कर सकते हैं । मेरा इससे विरोध नहीं है । मैं तो अब अपनी आखिरी मंजिल पर हूं, ७५ वर्ष का हो चला हूं । बंदायु में २० हजार का गांव कभी मेरा होता था उसको सरकार ने छीन लिया और उसके बदले में ४ हजार रुपये का बॉड मिला है । इसके अलावा पहाड़ पर एक छोटा सा मकान है, और कुछ जमीन बस यह ही थोड़ी सी जायदाद मेरे पास है और मैं आपको बतलाऊं कि मेरी लड़कियों ने लिख कर दे दिया है कि आपकी जायदाद में हम हक नहीं लेंगी । इस विषय पर बोलते हुए हमारी बहन श्रीमती शिवराजवती नेहरू और श्रीमती उमा नेहरू ने जो कि नेहरू खानदान की प्रतिष्ठित महिलायें हैं, उन्होंने कहा है कि अगर कुटुम्ब टूटता है तो हम जायदाद नहीं लेंगे । यह उदारता का परिचय उन्होंने दिया है और स्त्रियों की इसी उदारता और धर्मपरायणता पर तो हिन्दू धर्म स्थापित है और हमारी देवियों ने ही हिन्दू धर्म को अभी तक बचाया है और कायम रक्खा है और धर्म के खातिर हमारी बहनों ने मुसलमानों के तरह तरह के अत्याचार सहे लेकिन अपना धर्म नहीं छोड़ा । गुरु गोविन्द सिंह, महाराणा प्रताप और छत्रपति शिवाजी सरीखे हिन्दू वीरों ने मुगलों के अत्याचारों के सामने सिर नहीं झुकाया बल्कि उनका डट कर मुकाबला किया और हिन्दू धर्म को बचाया । हमारे देश में महात्मा बुद्ध ने यह समानता की बात चलाई थी कि सब समान ह लेकिन स्वामी शंकराचार्य ने उस बात को उलट दिया । हमने देखा कि जब मुसलमान एक हाथ में तलवार और दूसरे हाथ में कुरान लेकर निकल पड़े और हिन्दुओं पर तरह तरह के अत्याचार करने लगे और उनके सामने यह चीज रक्खी कि या तो मुसलमान बन जाओ वरना तुम को कत्ल कर दिया जायगा, ऐसे समय में गुरु गोविन्द सिंह, महाराणा प्रताप और शिवाजी महाराज सामने आये और हिन्दुओं को बचाया । मुसलमानों के बाद जब इस देश में अंग्रेज आये तो उन्होंने हमारे धर्म पर प्रत्यक्षतः तो कोई आघात नहीं किया लेकिन यहां पर ईसाई पादरियों द्वारा ईसाई धर्म का गांव गांव में प्रचार किया कराया जाने लगा और उस चुटियां कटिंग कम्पनी ने भोले भाले और अनपढ़े लोगों को यह बहकाने लगे कि अगर तुम इसाई हो जाओगे तो तुम्हारा जीवन सुखमय हो जायगा और तुमको नजात मिलेगी और उन ईसाई पादरियों के झूठे बहकाने

में हमारे बहुत से लोग आकर ईसाई बन गये लेकिन इतनी बात जरूर है कि अंग्रेजों ने हमारे धर्म पर प्रत्यक्ष कभी आघात नहीं किया । इससे हमें स्वामी दयानंद ने बचाया ।

अब वह जो पुरुषों और स्त्रियों में समानता लाने की बात हर तरफ सुनने में आती है तो उसके लिए मेरा कहना है कि इसका इलाज मनुष्य के पास नहीं है और इसके लिए तो भगवान से ही शिकायत करनी चाहिए कि उसने एक को पुरुष क्यों बनाया और दूसरे को स्त्री क्यों बनाया? स्त्री और पुरुष में जो भेद है वह प्रकृति ने ही बनाया हुआ है और आप कितनी ही कोशिश करिये वह मिटने वाला नहीं है । अब घर तो पिता या लड़का ही चलाता है और धन उपार्जन करता है जब कि स्त्री का काम उस धन से गृहस्थी का कार्य भार ठीक तरह से चलाना होता है और वह घर की व्यवस्था करती हैं और वह अपने काम को बहुत उत्तम रीति से करती हैं ।

हमको कोई तकलीफ नहीं है । यह है बटवारा काम का, हमारे कुटुम्ब में । आप इस बटवारे को तोड़ना चाहते हैं । मैं पूछता हूं कि क्या स्त्रियों में इतनी क्षमता आ गई है कि वह सारी सम्पत्ति का प्रबन्ध कर लें । फिर सम्पत्ति के साथ विपत्ति भी तो होती है, राइट्स के साथ कुछ ड्यूटीज भी होती हैं, उनको कौन लेगा ? अगर आप उनको बराबर का अधिकार सब बातों में दे रहे हैं तो क्या वह मैनेज (प्रबन्ध) कर लेंगी । पहले तो मेरे पास काफी सम्पत्ति थी, बीस हजार की थी, खूब मौज से खनाखन रुपया आता था, बैंक बैलेंस था । अब बैंक बैलेंस एक पैसा नहीं है । पहले जमींदार था, शान से रहता था, अब वह सब कहां है ? सब कुछ तो छिन गया, राजा महाराजा जो थे उनके पास का सब कुछ छिन गया, फिर मैं तो एक छोटा सा जमींदार था, मेरे पास अब है क्या ? मैं तो मिताक्षरा से बच जाऊंगा, बिल से बच जाऊंगा, जो पढ़े लिखे लोग हैं वह तो कुछ इन्तजाम कर लेंगे, लेकिन हमारे यहां एक खस जाति के लोग रहते हैं हिमालयन रेन्ज में । उनके पास छोटे छोटे खेत होते हैं, नंगी क्या निचोड़ेगी और क्या नहायेगी । पढ़े लिखे लोग देंगे और देते हैं, पैसा देंगे, टका देंगे, लेकिन वह बेचारे क्या देंगे ? उनके ऊपर तो आपत्ति ही आ जायेगी । मैं देहातों में देखता हूं, चार आने का हिस्सा, दो आने का हिस्सा । मैंने देखा है कि पहाड़ों के लोग यहां आते हैं, बरतन मलते हैं, छोटे छोटे काम करते हैं । उनके पास पैसा नहीं, बुद्धि नहीं, विद्या नहीं । उनकी क्या हालत होगी ? उनके कुटुम्ब का कैसे गुजर होगा । हम तो अपनी विद्या के बूते से, विवेक से सब कुछ ठीक कर लेंगे । आखिर यहां विद्या का बटवारा तो हो ही नहीं रहा है, पैसे का बटवारा हो रहा है ।

बुद्धिर्यस्य बलं तस्य निर्बुद्धेस्तु कुतो बलम् ।

निर्बुद्धि के तो बल होता नहीं । जो यहां पर आये वह बलवान हैं, सब को समान अधिकार है, जो चाहेंगे कर लेंगे, जो देहातों के निर्बुद्धि लोग हैं उनका क्या होगा । पाटस्कर साहब आज हमारे मनु बन गये हैं । वह कहते हैं कि मनु को न मानो, याज्ञवल्क्य को न मानो, रामायण को मत मानो, गीता को मत मानो, मुझ को मानो और मुझ पर ईमान लाओ । उन्होंने यह नहीं सोचा कि इन बेचारे देहात वालों का क्या होने वाला है । मुझे क्या है, मेरी जिन्दगी तो खत्म हो गई, मैं ७५ बरस का हूं, दो एक बरस और भगवान दे देगा तो रह जाऊंगा, नहीं देगा तो चला जाऊंगा । मैं आप से कहता हूं कि मेरा वसीयतनामा तो तैयार है, एक दफा मैं बहुत बीमार हुआ, डाक्टरों ने कहा यह तो खत्म हो जायेगा । मैंने वसीयतनामा लिख कर रख दिया ।

एक माननीय सदस्य : उसमें सुधार कीजियेगा इस एक्ट के मुताबिक ?

श्री बी० डी० पांडे : मुझको तो यह टच नहीं करता । मेरी लड़की बड़ी बुद्धिमती है, उसने कह दिया कि पिताजी, मैं नहीं लेती हूं, मेरे लेने से कुटुम्ब टूट जायेगा । यह कहा जाता है कि और कोई नहीं सिर्फ नेहरू इस बिल को चाहते हैं । किन्तु नेहरू खानदान की दो प्रतिष्ठित महिलाओं ने स्वयम् अपना त्याग दिखा दिया है । मेरी तो समझ में नहीं आता कि आखिर कौन इस बिल को बना रहा है । हमें अपनी फिक्र नहीं है, हम तो अपनी चीज को ठिकाने लगा लेंगे, लेकिन देहात वालों को बिल्कुल चौपट करने वाला यह बिल लागू किया जा रहा है । मैं खत्म हो जाऊंगा लेकिन मेरी वसीयत को आप समझ लें । आपको इस बिल को बदलना पड़ेगा, सरकार को बहुत संभल कर इसको अमल में लाना होगा क्योंकि इसकी वर्किंग (संचालन) मुश्किल है । हमारी यू० पी० गवर्नमेंट ने यह तय कर दिया है कि ६ एकड़ से नीचे जमीन

[श्री० बी० डी० पांडे]

नहीं बटेगी । ३० एकड़ की तो सीलिंग (अधिकतम सीमा) रक्खी गई है । अब आप का रुपया सारा बट जायेगा, कश बट जायेगा, जमीन भी बट जायेगी, ऐग्रिकल्चरल लैंड भी बट जायेगी, लेकिन दूसरी तरफ जमीन का इन्तजाम कौन करेगा ? ससुराल और मायके दोनों जगहों की जमीन का इन्तजाम कौन करेगा । सिर्फ बेचारी लड़की झगड़े में पड़ेगी । जो भी लड़की के पास जायेगा जमाई उसको खा जायेगा । जोड़ जोड़ कर मर जाओगे, और माल जमाई खायेंगे । असल बात यह है कि लड़की के हाथ कुछ भी लगने वाला नहीं है इसको आप अच्छी तरह से समझ लें । यहां पर सब सज्जन बुद्धिमान हैं । मैं भी वृद्ध हूं, मैं भारत का भला चाहता हूं, बुरा नहीं चाहता, लेकिन मैं पश्चिमी सभ्यता को नहीं लाना चाहता, लेकिन वहां पर भी ऐसा कानुन नहीं है कि लडकी इधर भी जायदाद ले और उधर भी ले । अगर लड़की को जायदाद मिलेगी भी तो वह कहेगी, यह क्या है, हमारी जायदाद तो ससुर ही खा जायेंगे । वह कहेंगे लड़की से कि ला अपने बाप के यहां से जायदाद का हिस्सा । यह जायदाद ला, वह जायदाद ला फिर यहां राइट आफ प्रिएम्शन (पूर्व क्र्याधिकार) भी ह । इस कानून को अमल में लाना बड़ा कठिन होगा । इसलिये इस नियम को बनाने से पहले हमको अच्छी तरह से विचार कर लेना चाहिये । मेरी विनंती है कि बड़े भाग्य से पाइये दाद, खाज और राज । हमें गांधी की सत्य और अहिंसा की नीति से यह राज्य मिला है, इसको सत्य और अहिंसा से रखिये । राम का राज्य आने से पहले भरत ने १५ आ० टैक्स माफ कर दिया । लोग कहेंगे कि यह भाई का राज्य ले बैठा है, इसलिये उन्होंने १५ आ० टैक्स कम कर दिया, सिर्फ एक आना ही रक्खा जब कि रामचन्द्र १ रु० लेते थे । ऋषि मुनियों से पूछा गया कि भरत का राज्य कैसा है । उन्होंने कहा कि राम का राज्य राम का ही है, लेकिन भरत ने १५ आ० टैक्स कम कर दिया । और यहां पर सेल्स टैक्स लगाया जा रहा है । हम बहनों को जरूर देंगे लेकिन फिर भी आप देखेंगे कि कितनी सर फुटीवल होती है ! बहनों ने कहा कि हम ने वोट दिये हैं । वह बात नहीं है कि आगे वोट नहीं मिलेंगे, वोट तो मिलेंगे ही, हम और आप देंगे । लेकिन जो जायदाद हम देते हैं वह बहनों के पास जानी चाहिये, पैसा और रुपया उनकी जेब में आना चाहिये न जमाई और ससुर की जेब में । आप के पति क घरमें जो जायदाद है उसकी आप मालिक होंगी । मेरे घर में मेरी स्त्री मालिक है और सब प्रबन्ध वही करती है, मैं तो एक पसे का हिसाब नहीं जानता हूं । सब कुछ वही करती है, वही सभालती है । लेकिन कहां उसका तिरस्कार होता है । हिन्दू धर्म में तो मान लिया गया है कि :

'यत्र नार्यस्तु पूज्यते रमते तत्र देवता:

आप मनु को गाली देते हैं, आज जो तिरस्कृत है, त्रस्त है उसके लिये मनु ने कहा ह कि उसकी पूजा होनी चाहिये । स्त्री के लिये कहीं भी मनु ने या याज्ञवल्क्य ने कटु शब्द नहीं कहे हैं । कहीं भी उन्होंने स्त्री का निरादर नहीं किया । आज कौन है जो स्त्री को नहीं देना चाहता है, लेकिन सरकार को सोचना चाहिये कि किस तरह से उसको जायदाद मिलेगी और उसके पास रहेगी । अगर आप एक के यहां की कमाई दूसरे के यहां दे देंगे तो यहां के कुटुम्ब टूट जायंगे, यह ठीक नहीं है । मेरी आप से यही विनती है । आप इस कानून को मैजारिटी से स्वीकार कर लेंगे यह मैं जानता हूं, लेकिन मैं चाहता हूं कि जो चीज यहां हो उससे भारत में सुख और शांति हो । मेरा अल्टिमेट एम (अन्तिम उद्देश्य) सुख और शांति है । मैं भगवान के चरणों में जाना चाहता हूं । मैं सब कुछ छोड़ कर जहां हिमालय में शिव रहते है वहां जाना चाहता हूं । आप पिंड दान करें, श्रद्धा करें, हमें पाटस्कर साहब को भी पिंड देना पड़ेगा ।

उपाध्यक्ष महोदय : इस शुभचिन्तन के बाद अब आपको कुछ नहीं कहना चाहिये ।

श्री बी० डी० पांडे : जिस तरह से स्त्रियों का भला हो उसको करने का मैं पक्षपाती हूं । उनके पास जायदाद रहेगी, पैसा रहेगा, हजारों रुपया वह दहेज में लायेंगी । मैंने अपनी दो लड़कियों को और एक नातिन को ग्रैजुएट बनाया है और उनको अच्छे अच्छे घरों में दिया है । शायद ही कोई हिन्दू ऐसा होगा जो अपनी स्त्री को, माता को और बहन को कष्ट देता होगा । बहरहाल मैं पति की जायदाद में स्त्री को हक देने का पक्षपाती हूं, और पिता के घर में नहीं । इतना ही मेरा निवेदन है ।

Shri Dabhi (Kaira North): I have moved my amendment No. 167.

Before I speak on my amendment, I would like to show by an illustration the effect of the proviso to clause 6 without the *Explanation* as well as with he *Explanation*. That would make the whole position clear.

Suppose a male Hindu having an rest in a Mitakshara coparcenary dies leaving two sons and a daughter, and suppose the value of the coparcenary property is Rs. 9,000. Under the proviso to clause 6 without the *Explanation*, the interest of the father who dies would be Rs. 3,000 and the share of the daughter would come to only Rs. 1,000. Out of the property of Rs. 9,000 the daughter would get only Rs. 1,000. This is not fair. If you want to give equal share to the daughter this would not be fair. Realising that this would not be fair to the daughter, the *Explanation* has been added to the proviso. If that *Explanation* comes into operation, what would happen is when the father dies, the daughter would get Rs. 3,000 out of Rs. 9,000. In my opinion this is not fair to the sons. I shall presently give my reasons for this.

I am not opposed to giving equal shares to the daughters as the sons, but I am opposed to giving a compulsory share to the sister from the property which has been acquired by the brothers. We know that in a Hindu family the daughters are not earning members. When they come of age they are married and they go to live with their husbands. On the other hand, we know that in the Hindu joint family, the sons also contribute greatly to the acquisition of property. So, it would not be proper to give a share to the sister out of the property which the brother has acquired. The only result would be that the brothers would like to partition the joint family property, and there would be no advantage to the daughters also because if there is division, they would not get.

The Minister of Legal Affairs has already stated in this House that this Bill is not meant to put an end to the Mitakshara family, but the inevitable result of this clause if passed as it would be that it would leave nothing of the Mitakshara joint family. Referring to the objections that can be raised to the *Explanation* to clause 6 the hon. Minister said :

> "It is further contended that as a result of this Explanation people will resort to partitions to avoid the effects of this provision. This law of inheritance is based on the principles of natural love and affection and whatever the prejudices and sentiments against it at present I am sure that these natural feelings of love and affection will ultimately triumph and the future fathers and brothers will abide by this law to ensure justice for their daughters and sisters."

If we have to depend merely on the natural feelings of love and effection, then there is no necessity to pass any compulsory law. The reply would be : let the natural love and affection take their course.

As I said, I am not against giving full share to the daughters with the sons, but what I am objecting to is that it is not fair that, if the sons have also contributed to the coparcenary property, the daughters should get a share in that also. It is for this reason that I have moved amendment No. 167 which is really a proviso to the present *Explanation*. It reads :

> "Provided that if any adult male descendant has made any material contribution to the acquisition of the coparcenary property such contribution shall not be taken into consideration in computing the share of the female relative in the coparcenary property."

The substance of my amendment is that ordinarily the daughters and sons would get equal shares in a coparcenary property after the death of the father, but if in a particular case any male member wants to go to the court and prove that he has contributed materially to the acquisition of the particular property, then his contribution should not be taken into consideration. This is quite just and fair. On the one hand, if you remove the *Explanation* and keep merely the proviso, it does injustice to the daughters. If you keep the *Explanation* together with the proviso, then I think it does injustice to the brothers. So, my amendment is a sort of *via media*. I know the hon. Minister has given his amendment No. 201, but in my opinion even that amendment does injustice to the daughters. It may be said that it would be very difficult to prove how much a brother has contributed to the acquisition of the particular property, but you cannot avoid going to the courts. Anyhow, ordinarily the daughter would get an equal share and if occasion arises, the contribution of the brother should be excluded. So, I think my amendment does justice to both daughters and sons. I suggest that it may be accepted.

Shri Velayudhan: I thank you for giving me an opportunity to express my views on this very important social legislation.

I was closely following the speeches from the other side, especially from many elder statesmen who have done great service for the national cause, and I was very much surprised because this Bill is an acid test to know the real attitude of people towards the progress that the mind of man has made in India during the last quarter century. I am not going to accuse nor do I want to find fault with the feelings of those elder statesmen. I would say that it is high time that we must change the attitude that we have adopted so long, the system that we have followed so long, and the method that we have adopted so far for our social or economic life.

A lot of thing has been said about the womenfolk of our country. When I heard Shri Tandon talking about modern women, I was surprised and shocked that he had not had a clear or correct appreciation of the modern women and if my words are taken in the correct spirit, I would say that he has not had a right experience of the modern women of today. It is very unfortunate that the modern women are not taken in the right spirit by the elder Members of this House.

Women will have to get an equal share with men. There cannot be any dispute on that point, because we all stand for equal opportunity to everybody.

Pandit Thakur Das Bhargava: Only equal.

Shri Velayudhan: Of course, you do not know what equality is.

In our Kerala State, we had a certain system of succession, which was a very progressive one. We had about seven Bills passed as early as forty years ago, but they have all been annulled now because this Bill is not fulfilling the progressive role which we had played in our State in regard to succession rights of men as well as women.

I would like to point out that it was not only the Marumakkattayam system or matriarchal system that was prevalent in our State. There were also other systems. Many people in North India think that only the Marumakkattayam system was prevalent there. But if they were to read a correct history of the Kerala State, they will find that it was enjoyed only by a minority of the people. Of course, they were the feudal community in our State, namely the Nairs of Kerala. The other communities had practically laws of succession more or less like the common law of England or any other modern country.

If we pass this legislation, then some of the progressive customs and legislations that we have in our State will fall to the ground, and the result will be that the women will practically be the victims of this legislation, in our State. That is what we are experiencing with regard to this legislation.

I do not think any revolutionary or great change has been made in this Bill. Even the original provisions have been whittled down by further amendments, and the latest amendment brought forward by my hon. friend Shri Pataskar is practically taking away all that we sought to confer on women under the original Bill. I think the Minister has succumbed to the pressure group in the Congress Party, with the result that the Bill is not what we all expected it to be.

After all, we are concerned here mainly with property. I do not attach any importance or sacredness to property, because I do not believe in the possession of property at all. That is what was said by Gandhiji himself. So it is not a new theory or new phenomenon that I am advocating now.

Shri K. K. Basu (Diamond Harbour): Shri A. M. Thomas challenges it.

Shri Velayudhan: Of course, Shri A. M. Thomas was never in the Congress. So, how could he appreciate the spirit of that?

Gandhiji himself had said that he was against the possession of property.

Pandit K. C. Sharma : He was a saint.

Shri Velayudhan: I also feel the same way.

Shri V. G. Deshpande: He is also a saint.

Shri Velayudhan: I think the whole trouble has arisen because people want to amass more wealth and property at the expense of others. When we are

thinking of putting a ceiling on lands, and a ceiling on salaries, it is strange that in the course of this discussion, a controversy should have arisen on the question of distribution of property. It is practically, I think, a meaningless debate that we have had so far; from my own point of view, it is a kind of an indecent debate that we have had, because we have been debating on something which is half dead or mostly dead.

Now, what about the women of India? There is no use saying that the modern women are walking about in Cannaught Circus or in the bazars of Bombay city or any other place. The fact remains that the women of India have been exploited to a greater extent, and they have been greater sufferers than the women in any other part of the world. What is the condition of the women belonging to any sect or any community in India? Take, for instance, the Hindu community. I must tell you that the Hindu social structure is one of exploitation of the weak by the strong. Of course, I also belong to the Hindu community, but I must tell you what obtains in our own religion or faith. The Hindu believes that if he is strong, he should suppress the weak. The result is that when the weak man comes before the strong man, he acquires a kind of weakness at the very sight of the potential force of the strong man. This is the Hindu's characteristic. This has been the position for centuries.

Shri Bhagwat Jha Azad: The hon. Member has not studied Hindu life properly.

Shri Velayudhan: I have read Hindu life more than the hon. Member has done.

Pandit Thakur Das Bhargava: May I know how all this is relevant to clause 6?

Shri A. M. Thomas (Ernakulam): From the very beginning, it has not been relevant. So, why should the hon. Member worry?

Mr. Deputy-Speaker: I would request the hon. Member to confine himself specifically to clause 6. I would also request other hon. Members not to make too many interruptions. An occasional interruption might make the debate livelier, but frequent interruptions lead to the deterioration of the debate. So, hon. Members should take care not to make too many interruptions. Sometimes, there are voices which become louder than that of the hon. Member who is speaking. So, I would like hon. Members to exercise some restraint.

Now, the hon. Member Shri Velayudhan should try to confine himself to the clause that is before us now.

Shri Velayudhan: It was stated not only by yourself but also by the Speaker that this clause practically embodies the whole spirit of the Bill. Since we are speaking on that particular clause ....

Mr. Deputy-Speaker: Simply because a clause imbibes the spirit of the Bill, it does not mean that the whole Bill is before us when that clause is before us.

Shri Velayudhan: Even though clause 6 seeks to confer the right to property on women, yet in my humble opinion, that right is sought to be taken away by the amendment brought forward by my hon. friend Shri Pataskar. I therefore feel that all this tom-tomming about the Hindu Code and so on is meaningless. It just gives what the orthodox section of the Hindu community wants it to give. It is not giving the due share to the women at all. Practically, it seeks to take away something which the women of Kerala have already got.

What was the custom in Kerala before? According to the Nayar Bill or the Theeya Bill which had been passed, the women not only got an equal share, but they got something more than that; their children also got something, along with their uncles or their parents too. That had given a great impetus to the womanhood of Kerala.

I for one cannot understand how men can be separated from women, as far as our interests are concerned. Are they from Burma or Czechoslavakia or Pakistan? People were talking as if they were foreigners here, as if they had no women here, as if every women in India belonged to some other country. That was something very strange. It really pained me very much to listen to such things. I feel that that is not the proper spirit in which we should approach this Bill.

The legislation that is before us now is a great legislation. In my opinion, it marks the beginning of a great national movement in the country. And I would submit that it is in that spirit that we

[Shri Velayudhan]

should view this Bill. Unfortunately, our friends have not taken it in the right spirit. I would urge that let us all convert ourselves to that right spirit which was taught to us by Gandhiji. We have got a great tradition in our country, and let us all profit by the teaching that Gandhiji has given to us, irrespective of to whatever way of thinking we belong. I feel that Hindu society will be consolidated by this measure.

What is the condition of our Hindu society today? It is a crumbled organisation, an organisation which has not got any unity, an organisation which has not got any coherent strength today. Why do we have this legislation? Even though it is a moderate one it will, in my opinion, consolidate, strengthen and give new vitality to the Hindu social organisation and the Hindu social order.

I do not want to say much more about this Bill, because my views are pronounced as far as the social order is concerned. This will go a long way in building up a new India, a new social order in India. It is in that spirit that I request the Congress to accept the Bill, not with a spirit of vengeance but with a spirit of compromise, conciliation and conversion.

Mr. Deputy-Speaker: In addition to the amendments already moved, Pandit Thakur Das Bhargava wants to move amendment No. 36. That amendment is the same as No. 66 moved by Shri K. P. Gounder.

Shri Debeswar Sarmah (Golaghat-Jorhat) : I did not table any amendment. But may I have an opportunity to speak on clause 6?

Mr. Deputy-Speaker: He who wants an opportunity to speak should try to catch the eye of the Chair. He cannot get a guarantee straightaway.

Shri Debeswar Sarmah: I have been trying since yesterday. But it is very difficult to catch the eye of the Chair.

Mr. Deputy-Speaker: Even after that complaint, he has to continue that attempt.

Shrimati Renu Chakravartty: Sir, unfortunately I was not able to participate in the general discussion, being away. I am glad that I have an opportunity of saying something on this most debated clause 6.

I have tried to listen to the various speakers who have spoken before me to get enlightened further as to whether their points can really be accepted from the point of view of ensuring equality for women. During the course of those arguments, I became much more convinced than I was before that property is such a thing that it clings, and it clings much more tenaciously than even the natural affections and ties of blood. I am convinced of that, because all sorts of extraneous arguments have been brought up, the question of *dharma*, the question of virtue, of Sita and of all our ancient sages. All that has been brought forward to prove what? That without the right of the son to the property of the father, neither can we have *dharma* nor can we keep virtue, nor can we keep to all the ancient culture of which we are the inheritors.

The question of saving the joint family system has been one of the arguments brought forward. Times have changed. The very basis of the joint family is slowly crumbling before our eyes, and it has been to a certain extent, amusing for me to watch how those very people who have been bringing forward this question of joint family property have also been urging that those sons who did not have the right to demand partition should now also be given the right of partition. So that with the right of partition which already has been granted to the large sections of those who belong to the Mitakshara coparcenary, as a result of the changing circumstances of our society, those who do not have that right are also asking for partition. I say, let us look at the times. Why is partition being demanded today? Because today individual property is in the forefront one of the things that modern society has brought into being.

From that point of view, I ask: since the basis of joint family property has changed, why should we cling to what Manu said, what Yajnavalkya said? Surely, we are not clinging today to some of the things that happened in those days. New concepts have arisen; new economic forces have come into play and new social ideas have come into play. Therefore, it is best that without gibing at people we should look upon this question from the point of view of whether it will help our society,

whether it will help our men and women and whether it will help our family as a unit. That is what I would like to urge upon this House.

Now new concepts have come. There is the joint family business. As far as we know, many of these joint family businesses have really been a cloak for evading income-tax. New ideas of business have also emerged. Limited companies are there; partnerships are there, and corporate bodies have come into existence. So I would earnestly request this House to look upon the times as times where old ideas are changing and giving place to new. It is with that mental dynamism, that dynamic attitude that we must look upon this Bill.

In clause 6, the entire debate has been on question of Mitakshara law and as to whether the women born into a Mitakshara family should have a right to inheritance or not. We belong to the Dayabhaga school, and once a woman is ensured equal rights with her brother, she gets equal share. We are all part of the Hindu family. I totally disagree with Shri Tandon when he thinks that Mitakshara is the quintessence of all good virtue in the Hindu religion. I am not much conversant with all the sastras etc., nor do I think it is necessary to bring up all those things today. But this much I can say, that I have recently been to Malabar, I have seen women there having rights, may be much greater rights than men. And yet I have not seen that Hindu *dharma* has fallen from its high pedestral, as Shri Tandon wants us to believe. I was most pained....

Shri Tandon (Allahabad Distt.-West): I never said anything of that kind, which my hon. friend is attributing to me. I never made any distinction between the Mitakshara law and the law prevailing in southern India. My speech had nothing to do with that. I do not know where the hon. lady Member read my speech.

Shrimati Renu Chakravartty : I read it in the papers. But I am very glad to hear that he agrees that 'dharma' is not affected by giving of rights to women in the father's property, and that the giving of such right does not bring down the edifice of Indian culture or Hindu culture.

Shri Tandon: Please do not attribute to me those views either.

Mr. Deputy-Speaker: Order, order. He only said that he did not say those words or those ideas that are being attributed to him. But from that the inference does not necessarily follow that he believes in what the hon. lady Member said.

Shrimati Renu Chakravartty: I think it is very difficult for me to find out exactly what the hon. Member has said. So I had better leave him out.

Now, I have seen in Malabar that women have rights, and they also have rights on land. I can understand the attitude of my brothers who have for so long enjoyed the full right of property. It is very difficult for them to give up that right and they won't do it without a fight. I can understand their position. But what pained me most of all, and surprised me most of all, was the speech of Shrimati Uma Nehru. Having worked in the Women's Conference for very many years, having looked upon her as a woman who has fought for the rights of women, for her to have said that women should not have a right to land surprised me very much.

An Hon. Member: She did not say so.

Shrimati Renu Chakravartty: I am very glad to hear that. It seems even that speech is misreported. It seems that people are now thinking that nothing will be lost by allowing women to hold the right to land and also to have equal rights with men.

I saw in Malabar that women do hold land. They do have equal rights to property, and they have managed well. That is why I feel that this Bill giving this right of holding property to women is a step in the right direction.

But when I come to analyse the Bill, over which there has been such a furore I am almost at one with some people who have said that this is a fraud upon women. The amount that is being given is being lessened daily. Firstly, when the Joint Committee considered it, clause 6 had said that in computing the daughter's share, the divided son's property would also be taken into consideration, and only then division would take place. Even at that time, we had pointed out that in certain circumstances, the daughter would get less and in certain other circumstances, the son would get less. That is why, in spite of all the ingenuity that we could bring to bear

[Shrimati Renu Chakravarti]

upon this matter, some of us have been convinced that without ending the right by birth and by survivorship, which are the two essential tenets of Mitakshara, we cannot ensure equal rights to son and daughter.

3 P.M.

But the Government was not prepared to go as far as ending the Mitakshara and introducing the Dayabhaga in all places. So, within that limitation, all sorts of permutations and combinations were brought to play and, finally, the Joint Committee thought that, when a woman does not have education, does not have the opportunities for earning and the ability to participate in social production and had a low or inferior social status, from all points of view, if there is a little imbalance in favour of the daughter, let it remain. When it went to the Rajya Sabha, that was defeated. We found that it was only in competition with the undivided son that at the daughter's share will be greater.

Now, we find that that is also going to be abolished and a new Explanation is brought in. If this Explanation 1 goes through, it will be even worse. Another Explanation 2 is added, whereby a little more will come to the daughter and undivided son because of the fact that the devided sons will not have a right to demand any further part of the property of the intestate father. If Explanation 2 is gone, then, I say, all that we have got is almost lost.

Not only that; there is clause 32. We are giving the right to will away even ancestral propetry. That is another weapon that has been put into the armoury of the father or the joint family so that the daughter may not inherit even a small fraction of the ancestral property which may otherwise become her due. There are safeguards and hedges all round.

There is a safeguard that if there is a house it will not be divided. I supported some of the safeguards because I felt that if there was one dwelling house there must be certain guarantees and safeguards. There is the question of pre-emption so that the family property may not go outside the family. All these safeguards have been given and, in spite of that, I find that so much furore has been created on this question.

I find so many other extraneous arguments put forward. I want this House to consider the whole thing in a certain light; that is the light of the welfare of the family. After all, a family is consisting of a husband and wife and the children. That is the pattern which is developing more and more. I do not agree at all with certain hon. Members who have said that if there is a separated family and if the father goes and stays with that family, he should have to pay. I have always lived in a separate family. I have seen many of my relations coming to our family and they have not to pay for their stay. Nor is it a fact that because I live in a separate family —I do not live in a joint family—I do not look after my mother. I have not seen natural affection burnt just because we live in separate families. I do not agree with that argument at all. I do want this House to consider that it is the family with the father, the mother with their children forming the pattern of family unit that is emerging more and more. Within that family, if the daughter inherits or the wife inherits from her father, that part of the property goes to the welfare and well-being of the husband and the children just as much as the property which the husband inherits from his father goes to feeding and keeping in happiness his children and his family.

If that is so, then, I do not see any reason why you should pitch brother against sister or the husband against the wife. Why should you make it a question of man versus woman? I feel that it is the welfare of the family that we have to take into consideration and, above all, the consideration should be the nautral bonds of affection, that affection which alone can bring dignity to a home. These are the new concepts which we have to build up and without which all that we talk about a new social order is so much bunkum.

श्री कृष्णचन्द्र : इस बिल की मंशा यह है कि स्त्रियों को जो आज हमारे कानून में समान अधिकार सम्पत्ति पर प्राप्त नहीं है। यह जो अन्याय समाज में उनके साथ हो रहा है, उसको दूर किया जाय। जहां तक इस कानून के उद्देश्य का सम्बन्ध है, वह बहुत अच्छा है परन्तु हमको देखना यह है कि कानून की रचना उस उद्देश्य की पूर्ति के लिए किस प्रकार की गई है, उस रचना में कहां तक उस उद्देश्य की पूर्ति होती है और कहां तक वह उद्देश्य की पूर्ति में भ्रमफल रहता है।

उपाध्यक्ष महोदय, यदि इस धारा के ऊपर जो संशोधन आज इस सदन के सामने पेश हैं, उन पर ठंडे दिमाग से विचार करें तो साफ पता लग जायेगा कि जैसे जैसे हम अपने उद्देश्य की पूर्ति के लिये जो खामियां हमको दिखाई देती हैं, उनको दूर करने की कोशिश करते हैं, वैसे वैसे समस्या और जटिल होती जा रही है, कहने का मतलब यह है कि इस कानून की जो रचना है, वह उद्देश्य को पूरा नहीं करती है । अभी मुझ से पहले जिन माननीय सदस्यों ने तकरीर की है, उन्होंने अभी आपको बतलाया कि धारा ६ में जो संशोधन माननीय विधि मंत्री की तरफ से आज किया गया है, उससे जो अधिकार सम्पत्ति का लड़की को या विधवा को दिया गया था, वह भी अधिकार बहुत कम हो जाता है । आज आवश्यकता इस बात की है कि सम्पत्ति के अंदर स्त्रियों के अधिकार में जो असमानता पाई जाती है, उस असमानता के मूल कारण को हमें दूर करना चाहिये और इस असमानता को दूर करने का एक मात्र उपाय यह हो सकता है कि आज जो मिताक्षरा कोपार्सनरी (संमाशिता) के अन्दर हमारी स्त्रियां मेम्बर नहीं होती उनको उसमें शामिल कर लिया जाय और यदि मेरे अमेंडमेंट को यह सदन स्वीकार कर ले तो जो मूल कुठाराघात समानता के ऊपर है, उसको हम दूर कर देंगे और उस अमेंडमेंट की मंशा यही है कि जहां मिताक्षरा कानून में लड़के को अधिकार है, वहां लड़की को भी कोपार्सनरी का मेम्बर करार दिया जायगा और लड़के की बहू और मृत लड़के की विधवा इन सभी को कोपार्सनरी का मेम्बर समझा जायगा । यदि हम इनको मिताक्षरा कानून के अन्दर शामिल कर दें और लड़कियों, बहुओं और विधवाओं को भी मिताक्षरा के अंदर कोपार्सनरी में मेम्बर बना दिया जायगा तो फिर हमारे सामने कोई दिक्कत नहीं रहेगी और हमारी जो मंशा और उद्देश्य है वह भी पूरा हो जायगा और जो जटिल समस्या आज हमारे सामने है, वह भी ठीक तरह से हल हो जायेगी । हमने अभी तक और भी बहुत से कानून पास किये हैं और यह कोई पहला ही कानून नहीं है । स्त्रियों को सम्पत्ति में समान अधिकार प्राप्त नहीं था और इस असमानता और अन्याय को मिटाने के लिए हमने पहले भी एक आध कानून पास किया है। इस बुराई को दूर करने के लिये, इस अन्याय को मिटाने के लिये हमने पहले भी एक आध कानून पास किये हैं। एक कानून हमने सन्, १९३७ में 'हिन्दू वीमेन्स राइट टु प्रापर्टी ऐक्ट

श्री बंसल (झज्जर-रेवाड़ी) : आप का कौन सा एमेन्डमेंट है ?

श्री कृष्ण चन्द्र : १९९ । वह कानून हमने पास किया और उसमें स्त्री को सम्पत्ति में अधिकार दिया । लेकिन जब आज हम इस कानून की शब्द रचना को देखते हैं तो मालूम होता है कि जो अधिकार हमने पहले कानून के द्वारा स्त्री को दिया था उस अधिकार को भी यह कानून कहीं कहीं पर कम कर रहा है। जैसा कि नथवानी साहब ने, जो कि मेरे पहले बोल चुके हैं, बतलाया कि माननीय मंत्री महोदय का जो संशोधन हमारे सामने पेश है अगर वह स्वीकार हो जाता है तो सन् १९३७ के कानून के अन्तर्गत स्त्री को जो अधिकार सम्पति में मिला हुआ है वह भी बहुत कम हो जाता है । सन १९३७ में स्त्री को जो सम्पत्ति में अधिकार है वह इस तरह से है कि अगर हस्बैन्ड (पति) मर जाये और उसके दो लड़के हों, तो उसकी सम्पत्ति के तीन हिस्से होंगे । एक हिस्सा विधवा को मिलेगा और एक एक हिस्सा दोनों लड़कों को मिलेगा । अब इस कानून के अन्दर जो हमारे माननीय मंत्री जी का संशोधन है, अगर उसको मान लिया जाय तो विधवा को सम्पत्ति का एक तिहाई हिस्सा नहीं मिलेगा बल्कि जो पति का हिस्सा होगा, यानी एक तिहाई, उस एक तिहाई में से तीनों को मिलेगा । पति मर गया हो तो पति के मरने के बाद लड़के का हिस्सा तो एक तिहाई रहेगा, पति का हिस्सा जो एक तिहाई था उसमें तीनों को बराबर हिस्सा मिलेगा । इस तरह से सन् १९३७ में जो अधिकार हमने स्त्रियों को दिया था उसके अन्दर भी इस कानून से कमी हो जाती है ।

दूसरी मिसाल मैं आपको बताऊं । हमने धारा ३२ में विल (विरासत) करने का अधिकार दे दिया है । जहां जहां हम मिताक्षर हिन्दू ला को जगह जगह बदलने की कोशिश करते हैं, पैबन्द लगाने की कोशिश करते हैं, वहां समस्या और भी जटिल होती जा रही है । अभी तक विल (विरासत) करने का अधिकार नहीं था । सम्पत्ति में जिस जिसको अधिकार थे वह पवित्र अधिकार समझे जाते थे, कोई भी उनको मेट नहीं सकता था । अब हमने धारा ३२ के द्वारा इस रचना को बदल दिया और विल करने का अधिकार दे दिया । विल करने का अधिकार देकर कोई अगर चाहे तो सन् १९३७ जे के कानून में विधवा को सम्पत्ति में जो हक मिला हुआ

[श्री कृष्ण चंद्र]

है उसे भी रद्द कर सकता है। एक ओर इस कानून के जरिये उस हक को और पक्का करने की व्यवस्था की है अर्थात् लिमिटेड ओनरशिप को ऐब्सोल्यूट ओनरशिप में बदल दिया है, लेकिन दूसरी तरफ विल करने का अधिकार देकर अगर कोई ससुर चाहे तो लड़के की विधवा को डिसइन्हेरिट (दाय भाग से मुक्त) कर सकता है, वह विल कर सकता है कि उसको कोई हक न मिले। सन् १९३७ के कानून में यह अधिकार नहीं था। आज जब हम यह अधिकार स्त्रियों को दे रहे हैं तो दूसरी तरफ से जो अधिकार उनको पहले से मिले हुए हैं उनको छीन रहे हैं। यह उचित और न्याय की बात नहीं है।

अब देखने की बात यह है कि चाहे हम दूसरों से, जो कि इस विल से इतफाक नहीं करते, कितने ही कहे जाये कि तुम प्रगतिशील नहीं हो, लेकिन यदि गौर से देखा जाय तो हमको यह मानना पड़ेगा कि हमारे उद्देश्य की पूर्ति के लिये कानून की रचना करना जरा मुश्किल काम है। मैं इस सदन के सामने यह कहना चाहता हूं कि माननीय मंत्री महोदय के विभाग ने इस उद्देश्य की पूर्ति के लिये जिस कानून की रचना की है और जहां जहां पर कठिन समस्यायें आ रही हैं उनको दूर करने के लिये जो संशोधन उसने सदन के सामने रक्खे हैं, उनसे वह अपनी असली मंशा से दूर ही होते जा रहे है। इसलिये मैं सदन की महिला सदस्यों से खास तौर पर प्रार्थना करूंगा कि वह इस पर गौर करें कि उनको असली चीज की जगह कहीं परछाई मिल कर न रह जाय।

मंत्री महोदय ने अपने भाषण में सौराष्ट्र की रिपोर्ट का हवाला दिया। उन्होंने कहा कि ससुर के अन्याय से कितनी ही स्त्रियों को सौराष्ट्र में आत्म हत्यायें करनी पड़ीं हैं। मैं पूछना चाहता हूं कि ऐसी आत्म हत्याओं को मिटाने के लिये आपके कानून में क्या व्यवस्था है ? ससुर की सम्पत्ति में उनको अधिकार मिले, ससुर के यहां उनकी इज्जत हो, वह वहां पर गृहलक्ष्मी समझी जाये, इसके लिये क्या व्यवस्था आपने की है इस कानून में ? कहीं भी और कोई भी इस बात की शिकायत नहीं है कि किसी स्त्री ने कहीं पर माता-पिता के दुर्व्यवहार के कारण आत्म हत्या की हो, दूसरी तरफ माननीय मंत्री ने स्वयं कहा है कि सास, ससुर के दुर्व्यवहार से आत्म हत्यायें हुई हैं, लेकिन इस कानून में इसको दूर करने के लिये कोई व्यवस्था नहीं है।

मैं अपनी महिला सदस्यायों से जो कि इस सदन में हैं कहूंगा कि वह मुझे माफ करें अगर मैं उनसे यह कहूं कि वह हमारे हिन्दुस्तान की महिलाओं का प्रतिनिधित्व नहीं करतीं। आज अगर वह किसी का भी प्रतिनिधित्व कर रही हैं तो उन महिलाओं का कर रही हैं जो आगे बढ़ चुकी हैं, समाज के अन्दर वह काफी आगे बढ़ चुकी हैं और उनकी स्थिति इतनी उन्नत हो गई है कि वह इस सदन के अन्दर आ गई हैं।

प्रतिरक्षा संगठन मंत्री (श्री त्यागी) : जो अपने पतियों से भी आगे बढ़ गई हैं।

श्री कृष्ण चन्द्र : जो बेचारी बेपढ़ी लिखी स्त्रियां देहातों में रहती हैं, जिनके ससुराल में उनकी कोई इज्जत नहीं है, आज उनकी इज्जत रखने का सवाल है, आत्म हत्यायें भी वही करती हैं जो कि बेचारी बेपढ़ी लिखी हैं। जिनको मालूम भी नहीं है कि आज उनके लिये कहां पर क्या हो रहा है, जो अपने अधिकारों का प्राप्त करना भी नहीं जानती हैं। यदि आप यहां पर उनका प्रतिनिधित्व करती तो ज्यादा अच्छा होगा। यदि आप ऐसा करतीं तो आप कोशिश करती कि ससुर के घर में भी उनकी ज्यादा इज्जत हो। मेरा जो संशोधन है उसकी मंशा यही है कि वह अपने ससुर की सम्पत्ति में अधिकारिणी हों, वहां भी कोपार्सनर (समांशी) रहें और यहां भी। अगर आप ऐसा करें तब तो आप की जो असली मंशा है वह पूरी हो सकती है जहां पर असली दिक्कत स्त्रियों को है, जहां पर उनको परेशान किया जा रहा है, उसे आपको दूर करना है। अगर हम ऐसा नहीं करते हैं तो हम केवल उनको परछाई मात्र दे रहे हैं। यहां की महिला सदस्यायें मुझे माफ करेंगी, वह यह समझती हैं कि वह आज बहुत आगे बढ़ गई हैं, ससुर के यहां उनकी इज्जत है, इसलिये जो कुछ उनको करना है वह केवल यही कि मां बाप की जायदाद में हिस्सा ले लें। लेकिन मैं उनको बताऊंगा कि आज हमारे गांवों में करोड़ों ऐसी महिलायें हैं जो पिछड़ी हुई हैं, जिनके लिये उनके घर में कोई इज्जत नहीं है, जो ज्यादातर पढ़ी हुई नहीं हैं, वह उनका ध्यान करें। जब वह उनका ध्यान करेंगी तो उनको पता चलेगा जिस कानून की रचना हम करने जा रहे हैं उसमें उनकी रक्षा का कोई उपाय नहीं है।

श्री बंसल : मैं एक सवाल पूछना चाहता हूं माननीय सदस्य से, और वह सवाल यह है कि कृष्ण चन्द्र जी का जो ऐमेन्डमेंट है उसमें यह कहा गया है कि अनमैरिड डाटर्स (अविवाहित पुत्रियां)

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को भी कोपार्सनरी में हिस्सा मिलना चाहिये । मान लीजिये कि अनमैरिड डाटर्स को कोपार्सनरी का हिस्सा मिल जाय तो जब वह मैरिड हो जायेंगी तो वह हिस्सा उसके साथ ही जायेगा या कोपार्सनरी में ही रह जायेगा ?

श्री कृष्ण चन्द्र : मैं अपनी मंशा बता चुका हूं । हमारे मंत्री महोदय कानूनदां हैं, अगर कानून में कोई दिक्कत पैदा होती है तो यह उनका काम है कि उस को दूर करें।

श्री बंसल : आप क्या चाहते हैं ?

Mr. Deputy-Speaker: Let there be no further mutual discussion now. I have called Shri M. D. Joshi to speak.

Shri M. D. Joshi (Ratnagiri South): I am thankful to you for giving me this opportunity to express my views on this most controversial piece of legislation which is before this House. This piece of legislation is undoubtedly brought here with a very laudable object, namely to give equality of status to women. The equality of status, so far as our sisters, daughters and mothers are concerned, is not controverted by anyone. We all say they should be given equal status as that of the men. I do not think I need quote the various vedic verses or hymns which say that precedence should be given to ladies. I need not say what Manu has said, because Manu has given the higest pedestal to women in their houses.

उपाध्यायान् दशाचार्यः आचार्याणां शतं पिता ।
सहस्त्रं तु पितृन्माता गौरवेणातिरिच्यते ।।

The mata, that is mother, is equal to hundreds of preceptors and hundreds of fathers. That means a mother is hundred times as important as the father.

Mr. Deputy-Speaker: Order, order. I want to emphasise that we are being watched constantly. The House should not give the look of a market place where commodities are being negotiated separately between Members. Everybody is looking at us. But here and there there are some places of attraction. Where important Members sit, Members leaving their own seats gather round and go on discussing things. I am sorry to bring this to the notice of hon. Members. This should be avoided. There should be that dignity kept so that it may be said by those who come to watch us that certainly there is some decorum and dignity in the House and that the Members have some respect for each other.

Now I call upon the hon. Member, Shri M. D. Joshi, to resume his speech.

Shri M. D. Joshi: At the time of marriage, *ashirvad* is given to the bride in vedic verses and I shall quote only two lines:

सम्राज्ञी श्वसुरे भव सम्राज्ञी श्वश्रुवां भव ।
ननान्दरि च सम्राज्ञी सम्राज्ञी अधिदेवृषु ।।

The married girl is asked to be the *Samrajni*, the queen of the household. That shows the spirit in which a woman was looked upon in vedic or ancient times. I do know that, that ideal has not been always observed. I do know that, that ideal has not been kept in view by the society and a married woman has always been relegated to a back position in a corner of the house. That has been the case in many places. That has been always cited as a blot on Hinduism. I beg to differ from that. What I want to point out in this connection is that women have not been educated and therefore they have not been able to take their place along with men in the political life of the country. That does not mean that women are less honoured in their houses. That does not mean that a mother is less honoured in her house. Therefore, all this talk of finding fault with Hinduism for relegating women to a position of unimportance is, in my humble opinion,—I would not use any harsh word—not correct.

Sir, our sisters are clamouring for equality. They have been given equality under the Constitution. Women have occupied the highest places in our public life even before the present Constitution of India came into being. They have become Presidents of the Congress, they have become Presidents elsewhere, they have become Presidents of international conferences, they have become Governors and they are now occupying seats in the Parliament. They are also holding responsible positions in Government offices. Everywhere in public life you will see that now woman is treated as equal to man. Still the clamour for equality is being continued and they say that equality is being denied to them.

An Hon. Member: What about the percentage?

Shri M. D. Joshi: I am in favour of sending 100 per cent women to this Parliament. Let them legislate. Let them manage the whole nation if they are able to do it. But I do not find that they are prepared for it. They are clamouring for equality. They say that equality is being denied to them.

What are the grounds for their saying like this? They say, because they are denied the right of inheritance to the father's property. That is the bone of contention. Equality is now centred in that small inherittance.

Let us look at the trend of this legislation. The hon. Minister has mentioned about the progressive legislation. We also know that the courts and High Courts are all in favour of giving precedence to a woman, doing her justice. In Bombay State, when a father dies without a son, his property, if he has daughters, goes wholly to the daughters. The daughters do not take a limited interest but they take it wholly and absolutely. To that proposition no one can have any objection. What is proposed here in this legislation is that a daughter will be given a share equal to that of a son even though she is married.

Then, the hon. Minister says that he does not want to disrupt the Mitakshara system. I do not think he is doing justice to his own bill by saying so. My friend Shri N. P. Nathwani has been frank enough to confess that this Bill makes several inroads on Mitakshara system. In fact, it completely destroys the Mitakshara system. That is my contention also. To merely say to the people that the Mitakshara system has not been touched is not, I think, being frank or straightforward with the people. I know that the hon. Minister wants to do away with Mitakshara system, but in order not to go against public opinion, this Bill has been brought in at the thin end of the wedge and I am sure the next legislation will do away with Mitakshara system.

Shri Nand Lal Sharma (Sikar): Mitakshara system is finished here itself.

Shri M. D. Joshi: I agree. Here I am reminded of a story. There was a king. He had a pet parrot. He had given orders that it should be properly looked after. The servants were warned that if anyone of them brought the news of the death of the parrot, he would be instantly killed. One day on account of extreme cold the parrot died in the cage. Now it was a problem for the servants, how to convey the news to the king. Who could do it? If anyone carried the news to the king then he would be killed. Then one servant, who was very clever, said that he would do it. He went to the king and said: "Sarkar, I can't say". The king asked: "What do you want to say?" The servant said: "Your Majesty's parrot". The king asked: "What about him?" The servant said: "He has stretched his hands, his gaze are fixed, he is not moving his limbs, his body is cold...." The king said: "Then say that he is dead". The servant replied: " I shall not say it, you may say it." Here, Mitakshara is dead, but the Minister says: "I shall not say it, you may say it." I really do not understand this kind of tinkering with the matter. Either end it or mend it. If you cannot mend it, then end it. I shall not be sorry. Are we going to improve the society by that, that is my present question. When a daughter is given in marriage and goes into another family she merges into the new family and she becomes part and parcel of the new family. Not that the affection and love for that daughter vanishes or evaporates, but she becomes part and parcel of the new family. Now, when you propose to give a daughter an equal share in her father's property, let us see the effects. Sisters have before their minds' eye only a rich family where the share of the son and the daughter will come to several thousands of rupees. But they have not before their minds' eye the family of poor peasants who have got only a small house, a small piece of land and one or two bullocks. For instance, take the case of a peasant or a farmer who has got a family consisting of two sons and two daughters. Let us suppose he has got an acre of land and two or three bullocks. The two daughters will claim a share in the house and will claim a right to the bullocks also. I have quoted this instance to my sisters and they poohpoohed the idea. They said: "Will the sister be so heartless as to take away the bullocks? To a poor peasant, the bullock constitutes all the riches. Now, the daughter of the poor peasant goes to a poor family and not to a rich family. So, it is natural that the son-in-law and the daughter will get the bullock. But what will happen to that family? No one has taken care to pay attention to this predicament.

Shri Bansal: Cut the bullock into two. How does it matter?

Shri M. D. Joshi: If this is justice, what can I say? I do not know whether the hon. Minister has that idea in mind.

The Minister of Information and Broadcasting (Dr. Keskar): What do the sons do about the bullock, especially if there are four sons?

Shri M. D. Joshi: The sons may go without any bullocks or they may jointly cultivate their fields. They may do whatever they can. But why should the daughter who belongs to another family come back and cast her eyes on the bullocks and the poor house?

Then, in this Bill, provision has been made that the daughter, unless there is partition, cannot claim a share but she shall be entitled to live in the house. What will happen even though there is no partition? The daughter will even then go and claim to live there as a matter of right. I say to the hon. Minister that this is going to give rise to a lot of litigation and is going to disrupt Hindu society. With great respect, I want to bring to the notice of the hon. Minister that this Bill is not going to improve the lot of womanhood, but is going to create disturbance in the Hindu family, and therefore we are very sorry that we cannot welcome this Bill.

I know that it is very difficult to express a difference of opinion with the provisions of the Bill, because anyone who expresses a difference of opinion is going to be branded as—

Shri C. D. Pande: A reactionary.

Shri M. D. Joshi:— yes, a reactionary and as an anti-reformist and be spoken of with all sorts of epithets. But it is my duty, as an honest representative of the people who have elected me, to give a clear warning that this Bill is not going to improve the lot of women, but only it is going to disrupt Hindu society. It provides a right for women. They have got a limited right. A widow has got a limited right. It has been given under the enactment of 1937. But let that right be made complete. Let a woman, that is, a married wife, be entitled to a half-share in her husband's property. Make her the queen of the house in the full sense of the word. But let her not come and sow the seeds of discord in the family in which she was born. With that object in view, I have moved amendment Nos. 104 and 105. Although the hon. Minister may say that the Mitakshara system is untouched, I beg to differ. I would humbly submit that it is not only being touched but is destroyed and thus the seed of discord is being sown. Therefore, I am very sorry that this piece of legislation is being forced on the people.

Mr. Deputy-Speaker: I would like to see that the latest amendment that has been moved by the Minister is explained to the House so that the debate might become more real. There are some doubts about it as to the effect that it would have on the Bill. So, I call upon Shri C. C. Shah to speak now.

Shri S. S. More: Before Shri Shah gets up to clear the doubts, will it not be better that some of us who have some doubts precede him, so that he will be in a better position to explain?

Mr. Deputy-Speaker: The explanations of those doubts perhaps would come from the Minister. Let this amendment be first explained. Then the debate shall continue. Doubts may not be expressed then.

Shri Debeswar Sarmah: Is it to be explained by the Minister or Shri C. C. Shah?

Mr. Deputy-Speaker: Let us hear the hon. Minister who has been called.

Shri C. C. Shah (Gohilwad-Sorath): I have moved amendment No. 194 which is the same as the amendment moved by the hon. Minister, namely, amendment No. 201. Therefore, generally you can take it that in a way I am speaking in support of the amendment moved by me.

I propose to confine my observations to the clause which we are considering instead of a general discussion on the whole Bill. So far as this clause is concerned, it deals with joint family property and the interest of the deceased in the joint family property. The question before the House is as to the manner in which we should deal with joint family property and the manner in which we should give any interest to the famale heirs in the joint family property. On that point, obviously there are three different views before the House. There is one view, strongly held by a few hon. Members, that the joint family property should be entirely excluded from the purview of this Bill. To that, my simple answer is that if we exclude the joint family property completely from the

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purview of this Bill, no useful purpose will be served or very little purpose will be served by the Bill, and we may as well not pass this Bill at all. For, the major part of our property in our country consists of joint family property and if we are going to deny to women any interest whatsoever—whether it could be equal or less is a different proposition—in the joint family property, then this Bill will be of very little purpose and will not be worth our taking trouble over it. Therefore, I am firmly of the opinion and I respectfully submit that in some manner or the other we must give a female heir a right in the joint family property also.

There are those who are equally strong of the view that the joint family or the Mitakshara system should be put an end to immediately and that it is the only way in which female heirs can be given an equal opportunity in the joint family property. I hold that view. I do not wish to take the time of the House in advocating that view at this stage, knowing as I do, that it is not likely to meet with the approval of the majority of the Members of this House. I shall rather take this opportunity in explaining the compromise formula, if I may say so, or the *via media* which we have found between these two conflicting views rather than advocating the other view which I still hold. But, as I said in my speech which I made in the beginning, the Rau Committee has examined this question with a degree of fairness and dispassion which no other committee or commission has done. No arguments can be advanced beyond what they have done. In the joint Mitakshara family, as my hon. friend, Mr. Nathwani, pointed out, we have made many inroads. When we passed the Hindu Gains of Learning Act, we made the first inroad. The Hindu Women's Rights to Property Act was the second inroad. I entirely agree with Mr. Joshi—though not to the extent he goes—that this Bill will also be to a certain extent an inroad in the joint Mitakshara family. It is bound to be so to a certain extent; but until we come to a stage where we will be prepared to put an end to the joint family system, if we have to find a *via media*, we must accept this amendment.

Some hon. Members have said that this will mean ruining the Hindu society. I have no shadow of doubt that this will be for the betterment of the entire Hindu society. I do not want to argue over that question; but, those who draw a red-herring across this Bill will not be doing any justice either to the Hindu society or Hindu culture. The whole opposition to this Bill has been founded upon this one thing. It is not as if even the Members who have opposed this Bill are opposed to giving rights to women.

An Hon. Member: They are opposed.

Shri C. C. Shah: I would not say so. They have only found various other formulae for doing it. Some say, "give rights to the unmarried daughter"; others say, "give rights to the woman in the father-in-law's property and make her a co-sharer with her husband". There are others, like Mr. Krishna Chandra, who say, "make her a heir in the joint family itself; make her a coparcener." These are the various ways that have been suggested. If I had time, I would have satisfied he House....

Mr. Deputy-Speaker: The hon. Member has 15 minutes.

Shri C. C. Shah: .. that none of these ways are capable of implementation. None of these is a way which can come in a Bill of succession.

I come to those who have opposed this Bill saying, "Do not make the daughter a sharer in the father's property". With all respect to those hon. Members, I have not been able to understand this dread, so to say, of the daughter being the sharer in the father's property. There are two main arguments. One is that there will be excessive fragmentation of property. The other is the dread of the wickedness of the son-in-law. I believe every father who has a daughter finds a son-in-law.

An Hon. Member: All of us are sons-in-law.

Shri C. C. Shah: Both the fear of the wickedness of the son-in-law and the fear of excessive fragmentation of property are unfounded. If there are four sons or six sons, there would be fragmentation of property. Therefore, to prevent fragmentation is a problem which is entirely independent of any law of succession and that measure will have to take another form.

I shall explain the *via media* which we have found by this amendment No. 201 moved by the hon. Minister. As regards clause 6 of the Bill, objection has been taken more to the explanation to it than the proviso. By the proviso we say that every female heir will be entitled to succeed to the share of the deceased co-

parcener. To that there will be no objection, fairly speaking. But, the explanation also included the undivided son's interest in the father's interest. To that I was also opposed. I am not opposed to it for the reason that it will give the females a share in the property. As I said, I am in favour of putting an end to the joint family system here and now and giving the female a full share. But, I consider that this explanation is such that it will work as an injustice to undivided sons. It will work as an injustice particularly to minor sons and it will create any amount of complications. It will also do violence to the sentiments of the people. Therefore, my view is that while giving a share to the females in joint family property, we should find a *via media* which will met the needs of the situation and also do away with the complications which are likely to arise by the explanation.

The new amendment is this, namely, that on the death of a coparcener in a joint Hindu family, if there is a female heir, then the succession to his property or his share will be not by survivorship, but by succession, testamentary or intestate, as provided in this Bill. In that succession, his share will be the share which he would have got if a partition had taken place immediately before his death. By the explanation No. 2, we say that if a son has separated during the lifetime of the father, then that separated son will not be entitled to claim on intestacy a share in the undivided share of the father. This, in substance, is the amendment. My submission is that this amendment is much better than the existing provision in this Bill. Therefore, I commend that amendment to the acceptance of the House. For one thing, those who are in favour of the joint family will appreciate that by this amendment, there is an inducement for sons to remain joint, rather than separate, whereas by the existing provision in the Bill, there was an inducement to separate rather than remain joint. By this amendment and the explanation 2, the divided son is put at a disadvantage, namely, that he will not be entitled to claim a share in the undivided share of the father, whereas the undivided son will have a right to a share. Therefore, those who are in favour of the joint family will welcome this amendment.

The second way in which this provision is better is that it does not do any injustice to the minor sons or the undivided sons. I concede, and I said so even when I spoke the other day, that by this provision the female heirs will get something less than what they would have got under the existing provision. Mr. Krishna Chandra said that this amendment will be to the disadvantage of the widows, because under the existing Act of 1937, the widow gets a share equal to that of a son. Now, she will got something less according to this amendment. It is true; I do not deny it. But then, we cannot have it both ways. Under the Schedule which we have now, we are introducing many female heirs—the daughter, daughter's daughter, son's daughter, son's son's daughter and so on. I am sure the mother will not mind that the daughter gets a share. When we introduce more sharers, the mother gets something less than what she would otherwise get when the daughter was not a sharer. I think it is wrong to make a grievance of that. My hon. friend should remember that while under the 1937 Act the widow will get only limited estate, under this provision she will get absolutely estate, although she would get something less than what she would have otherwise got. It must also be remembered that now she will also succeed to her father and get some property.

Reference was made both by Mrs. Renu Charkravartty and Mr. Krishna Chandra that under the explanation to clause 32, right is given to the undivided coparcener to make a will of his share. I think there is some misconception or misunderstanding about this, basically. This is a Bill to provide for intestate succession. The fundamental priniciple of intestate succession is that intestate succession takes place when there is no testamentary disposition. It proceeds on the basis that the man has the right of testamentary disposition; if he has made no testamentary disposition, then only intestate succession takes place. Under the coparcenary law, as it stands today, a coparcener has no right to make a will of his share because it goes by survivorship. We are doing away with that principle of survivorship and providing for succession. If you provide for succession, it is obvious that succession must be testamentary or intestate. We are having testamentary succession for this reason: man, after all, is the best judge as to the manner in which his property should be disposed of. Take, for example the instance of a father who has two sons and two daughters. Both the sons, I would take it, are well

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educated and well settled in life. One daughter is married, but not well settled in life, her husband is poor. Another daughter is unmarried. When the father makes a will, he will take into consideration the fact that the sons are well settled. If the sons are well settled, it is better for him to provide for the daughters who are not well settled. Supposing you take away that right under clause 32 and say that the sons also get an one-fourth share, it means, you deprive the father of the possibility of providing for the daughter better. Don't distrust all fathers. That would be bad law; that would be a bad approach. We should not think that because the right of testamentary disposition is given to the father, forthwith every Hindu father will go and make a will depriving every daughter of her share in the property. If Hindu fathers do that, that Hindu society does not deserve to exist for a day and it would have died long ago. A Hindu father will never do it. To proceed on such a basis of distrust is to proceed on a wrong basis.

Shri Bhagwat Jha Azad: He may do otherwise also.

Shri C. C. Shah: I entierly agree; he may do otherwise also. The whole Bill relates to intestate succession. Intestate succession presumes that there is a right of testamentary disposition. The hon. Member Shrimati Renu Chakravartty said that this Bill is a fraud upon women. I am sorry she used that expression.

Pandit K. C. Sharma: She did not know what she was saying.

Shri C. C. Shah: It is not that she did not know. Probably she has deliberately done that. I say this Bill is one which will do credit to any society, much more to the Hindu society. We give the women, daughter and other female heirs, an equal share with the son in all separate properties. We give that share absolutely. In the joint family property we give her something less than an equal share. To say that it is a fraud on women is to use an expression which she probably does not understand or it is a misuse of that expression. I submit that considering the various conflicting views which are held on joint family property, the amendment now proposed by the hon. Minister is the best compromise which could be had in the circumstances. I would very humbly request this House even to unanimously accept that amendment, including all the Members who have opposed it.

Shri Barman: I have myself tabled amendment. No. 166. There is nothing new in that amendment. It practically incorporates what was contained in the Joint Committee report. In view of the amendment moved by the Government and just now very lucidly explained by the previous speaker Shri C. C. Shah, I say here and now that if that amendment be accepted, I do not press for mine.

The whole idea of bringing this Bill was primarily to give a share to the daughters in the property of the father or other male ascendant. That was the original idea. By the time the Bill went to the Joint Committee, the right of the daughter to the property of the male ascendant was recognised. The Mitakshara coparcenary property was totally exempted. That was the position. In the Joint Committee this decision, as we find in the report, was altered and the right of the female was recognised also in coparcenary property with certain provisions. That has been explained even today, and it is common knowledge of this House and I need not go into those details. The promise or intention of the House in bringing this Bill was met to a large extent. When the Joint Committee Report went to the Rajya Sabha, the Rajya Sabha cut out that part of that provision, which may bring in difficulty in some other way as has been just now explained. That is to say, if the Rajya Sabha amendment be accepted in this House, the poor father will be left only with minor children and daughters. Every son, as soon as he comes of age will separate from the father and take away his share, and then again remain expectant of getting a further share when the corpus of the property of his father again comes to be divided. That was the idea that underlies the amendment of the Rajya Sabha and it is right that this House does not concede that position to that separated son. When you entirely finish away coparcenary property, for which my hon. friends who belong to the Mitakshara coparcenary are fighting so much, we cannot accept that Rajya Sabha amendment or the provisions of the Bill as it is now before us.

What is the alternative? We have to meet the objection of those friends who think that the Mitakshara coparcenary system of property is an ideal one. I do not belong to that school and therefore I am not competent to say whether it is advantageous to society as a whole or not. My reaction is that such a system of property enures to the benefit of the

family no doubt, but not to the society. It is accumulation of wealth and accumulation of property and we do not accept that position in a socialistic state that there should be accumulation of property. But, as I have already said, not belonging to that school, I am not fully competent to judge that. To meet their objection we thought that in democracy we must respect the views of a large section of the population of India; we should not rush in a revolutionary way but we should try to satisfy as much as possible keeping our view before us. In that view of the case, I submit that the amendment that has been brought forward by the hon. Minister is a happy compromise. I find that even those who were opposing vehemently have cooled down today. I therefore, support that amendment.

There have been raised on the floor of the House many vital questions. All these matters, I think, we can consider coolly later on. Here we are only concerned with how to satisfy the demand of keeping the coparcenary property intact and at the same time give certain rights to female heirs.

4 P.M.

The question of agricultural property is certainly a very vital one and we are very much concerned with that. But it is for this Parliament to consider how to meet that grave situation. I shall not dilate on that point any more. But one thing I have to submit. By this clause with the new amendment female heirs as classified in Class I are getting the advantage of having a share in the coparcenary property when succession opens. In the Joint Committee Report, mother was put in Class I but in the Rajya Sabha the mother's position has been relegated to Class II. My personal view is, and I have considered it at length, that this would be an injustice done to the mother without any justification whatsoever. Considered from the point of view of propinquity or from the point of view of natural love—these are the two considerations that are generally taken into account—is the mother in any way in a worse position than the other female heirs who are included in Class I? What is the position? It is only Class I female heirs that are getting any share in the coparcenary property, not the other class. Therefore, the mother in no case will come up as a sharer.

Supposing a coparcenary family is composed of brothers. Any of the brothers may die leaving no heirs who come under Class I. Then, his property at once passes to his coparceners, *i.e.*, to the other brothers. The mother is excluded. If the family is composed of uncle and nephew, the nephew inherits the property of the uncle in preference to the mother. Why should the mother be excluded in this way? My humble submission is that while we consider the Schedule, the mother should be again included in Class I. Justice should be done to her.

Pandit Thakur Das Bhargava: Mother and father, both.

Mr. Deputy-Speaker: The hon. Member might proceed.

Shri Barman: We are considering here females who are helpless. So, I plead at least for the mother.

Pandit K. C. Sharma: Yes, you stand for females.

Shri Barman: If in its judgment the House thinks that father also should come under Class I, I shall certainly be happy, but the father will be a coparcener.

Pandit Thakur Das Bhargava: This schedule refers to separate property also, to all kinds of property.

Shri Barman: I have already said I have pleaded for the mother and I shall be happy to include the father also. I hope that the amendment brought forward by the hon. Minister will be accepted, and I shall not press mine, but if that is not accepted, which I do not think will happen, I stick to my amendment.

Some Hon. Members *rose*—

Shri Debeswar Sarmah: Mr. Deputy-Speaker, may I catch your eye?

Mr. Deputy-Speaker: Order, order.

Shri Nand Lal Sharma: We are all standing for the same reason.

Shri Debeswar Sarmah: Some are speaking endlessly, some are not getting any chance.

Mr. Deputy-Speaker: I assure the hon. Member when he speaks, the others will have the same complaint. He should not assume that he can give the best and the others are only speaking the very same thing.

Shri Debeswar Sarmah: I am very sorry.

Mr. Deputy-Speaker: But, instead of it, he has to be patient, whatever the case. That is what I am putting to the House. There is pressure from the Members, and there is a large number of them who want to speak. I do realise that this is an important clause. Now, it is for the hon. Members to decide whether they want to sit longer, or what they propose to do, how they should be accommodated. (*interruption*) One at a time and not all and still I am on my legs. Would it suit the hon. Members if we sit up to six today?

Some Hon. Members: Yes, Sir.

Some Hon. Members: No, Sir.

Some Hon. Members *rose*—

Mr. Deputy-Speaker: Shri Deshpande.

Shri Debeswar Sarmah: May I make a submission?

Mr. Deputy-Speaker: I have called Shri Deshpande.

Shri Debeswar Sarmah: I am not going to speak.

Mr. Deputy-Speaker: I assure him that he is speaking.

Shri Debeswar Sarmah: No, I am not speaking.

Mr. Deputy-Speaker: Is that not speaking? When he says these words, I assume that this is also speaking. I have called Shri Deshpande. When I have heard him, I will call upon the hon. Member. He can have his say later.

Shri V. G. Deshpande (Guna): My suggestion is that discussion of this clause should continue up to 3 p.m. tomorrow because many people want to speak, and this is such an important amendment. My feeling is that there is no harm in carefully considering the wording of the clause. No progressiveness or reactionarism is there. My request is that the wording should be carefully considered and therefore the debate should be extended up to 3 p.m. tomorrow.

Mr. Deputy-Speaker: If our object be that we should give a chance to every hon. Member who wants to speak, then even by 3 p.m. tomorrow we may not exhaust all of them. Some shall have to be left out and they will be disappointed I realise, but somehow some means should be found. May I have the sense of the House whether it is prepared to..

Shri Pataskar: May I say something As I said in the beginning....

Shri Punnoose (Alleppey) *rose*—

Mr. Deputy-Speaker: Let us hear the hon. Minister. When the hon. Minister speaks, would it be fair for the hon. Member to stand up?

Shri Pataskar: In the very beginning of the day I said clause 6 was very important, but at the same time I expected that after the elaborate general discussion that we had, probably the points would be confined as far as possible to the consideration of clause 6 itself. Of course, I do not grudge anything, I have not objected to anything, but I think even now if people concentrate more on this clause, that would be a much better thing. I think we have discussed the whole thing. We might extend the sitting to 6 p.m. I have no objection. I take only half an hour or so to reply, not more, but I think it should not be allowed to drag on for any length.

An Hon. Member: Would the hon. Minister continue tomorrow?

Mr. Deputy-Speaker: Shri Sarmah. I am not calling him to make a speech. Has he got to say something on this point?

Shri Debeswar Sarmah: With your permission, I beg to submit that I resent the remark that you have passed in respect of me? May I say that if we want to speak, it is not for the fun of listening to our own voices in the Chamber, but out of a sense of duty. And secondly, from your privileged position I would beg of you not to pass sarcastic remarks.

Mr. Deputy-Speaker: I still do not remember what sarcastic remarks I made.

Shri Debeswar Sarmah: That others may speak better than me.

Mr. Deputy-Speaker: I never said that. The hon. Member is in such anger. I never said that the others speak better than he. I only said that when he speaks the others might have the same complaint as he has against the others. Does he take objection to these words as well?

Pandit K. C. Sharma: There is a misunderstanding.

Shri Debeswar Sarmah: You are entitled to say what you like.

Mr. Deputy-Speaker: All right.

Shri Punnoose: Hon. Members may be divided into sons and daughters, and you as father give them equal opportunity.

Pandit Thakur Das Bhargava: I only want to get an assurance at this stage from the hon. Minister, when we are considering clause 6 and have not considered the Schedule, that all that is being done here so far as clause 6 is concerned is subject to our passing the Schedule. because we have given many amendments to the Schedule. It should not be taken that by adopting this clause we are adopting the Schedule.

Shri Pataskar: I can give that assurance that by passing this clause 6 I will not stand in the way of Members moving amendments to the Schedule.

Mr. Deputy-Speaker: We can do this, the hon. Minister might reply tomorrow, but whether we want more time and whether we should sit longer is the question. What is the sense of the House ?

Shri Bhagwat Jha Azad: May I submit....

Shri T. S. A. Chettiar (Triuppur): *rose—*

Mr. Deputy-Speaker: Shri Azad. One by one.

Shri Bhagwat Jha Azad: May I submit that I think it is dilatory tactics on the part of those friends who have requested you for time up to tomorrow to continue this clause? We have sufficiently discussed this Bill for 13 hours in the general discussion. We have already devoted about three hours to this clause. We have decided a time schedule according to which we have to finish the voting on this clause by this evening. There are other clauses also on which those very hon. Members have given notice of a large number of amendments, and they will have important things to say on those clauses also.

Mr. Deputy-Speaker: The hon. Member need have no fear in that respect, because there is an overall limit, as the hon. Member would realise.

Shri Bhagwat Jha Azad: My submission is that the voting on this clause should be finished today; it should not be extended tomorrow.

Shri V. G. Deshpande: May I say something by way of personal explanation, because a charge has been made against me?

Mr. Deputy-Speaker: No explanations now.

Shri V. G. Deshpande: I want to point out one new thing also. Today, when this clause was taken up, the Speaker announced that those who had not spoken on the general discussion would be given chance to speak now, and about eight to twelve Members were called upon to contribute to the general discussion.

An Hon. Member: Why should you worry about that?

Shri V. G. Deshpande: There is no question of my worrying. Even if one man opposes, nothing is lost, because the thirty-five hours' limit is there. I would say that let us not look at it from a personal point of view. I am as anxious as every other Member that the wording of the clause should be proper. Perhaps, I may be wrong when I say that the wording should be better. Probably, I might not have understood it properly. But I want to follow the implications fully from the speeches of others. So, I would suggest that full attention should be paid to the wording of this clause, and one or two more hours may be given to the discussion on this clause, because about three hours have been devoted for general discussion, and the Speaker had deliberately called upon those who had not spoken during the general discussion.

Mr. Deputy-Speaker: I think that would suffice. Let us proceed with the discussion, and see how the debate progresses.

Shri T. S. A. Chettiar: You must have an idea as to how many more Members want to speak?

Mr. Deputy-Speaker: There are about a dozen more Members who want to speak. Even if I enforce the time-limit of fifteen minutes for each, they would require at least three hours more.

Pandit Thakur Das Bhargava: Have you included amongst those twleve those who have tabled amendments also?

Mr. Deputy-Speaker: There are others also.

Pandit Thakur Das Bhargava: Others who have not given amendments perhaps.

Shri Bhagwat Jha Azad : What about those who have not moved any amendments? They may also want to speak, and oppose the other amendments.

Mr. Deputy-Speaker: That is what I am telling hon. Members. Those who have not tabled amendments also should get an opportunity, though primarily, I think, those who have tabled amendments should have a chance.

If hon. Members agree, I think we may sit up to 6 O'clock today. There is no harm in that. If we can do that, and if the Minister also could reply tomorrow, then we shall have about an hour more.

Shri Debeswar Sarmah had a great grievance against me. So, he may speak now.

Shri S. S. More: Shall we also get into a grievance against you, in order to get a chance?

Mr. Deputy-Speaker: It does not pay always.

Ch. Ranbir Singh (Rohtak): Sometimes, it does.

Shri Debeswar Sarmah: I am greateful to you for having given me an opportunity. It is not that I have grievance. But sometimes, one feels that a whole section of opinion or thought does not get an opportunity to express its view of the matter. I shall be very brief, because other Members are also waiting to speak.

I oppose all the amendments, and I support the Bill as it has emerged from the Rajya Sabha. I should have thought that the Rajya Sabha should have accepted the recommendations of the Joint Select Committee. But as it is, I submit that the Bill as passed by the Rajya Sabha should be accepted by this House.

I regret that the Minister of Legal Affairs has chosen to come forward with an amendment. Yesterday, when it was said, 'Do not yield to pressure', he said, 'I will not yield to pressure from any side'. But today if one looks at the list of amendments, one is irresistibly driven to the conclusion that the Minister has yielded to pressure from one quarter, as his amendment itself shows.

I would start by saying that I oppose the Minister's amendment, for the simple and obvious reason that it gives still less to women. It may be that that amendment has some merits. But the crux of the whole matter is whether the amendment gives what the Bill gives to women or it gives much less. I feel that it seeks to give less, and therefore I oppose that amendment. I hope that in this well-thought-out and timely Bill, this amendment by the Minister would be withdrawn.

All sorts of arguments have been advanced to stifle and stultify this Bill. Some hon. Members have said that the stability of the economics of the society has to be looked to. Others have said that there should be a balance approach. Others laid great stress on stability of Society. And some others whose opinions are entitled to our great respect, said that some of the provisions seeking to give property to women are unworkable and would lead to litigation only. I fail to understand how Hindu society will be upset, if property is divided between three sons and one daughter or two daughters. There is no imbalance, if property is divided between the sons, but imbalance comes suddenly the moment property is divided between three sons and one daughter or two daughters. That is what has been stated. Again, from Manu onwards, down to our present-day Manu's, all have been invoked just to deprive women of their rightful share in the property, as we understand it. I submit that the soul of Manu would be agonised, if he were to listen to the debate that we have been having all these days. It is distressing to find how Member after Member....

Mr. Deputy-Speaker: Now, we should be more careful about our souls.

Shri Debeswar Sarmah: Quite so. Our souls are really distressed to listen to the learned arguments to deprive the women, particularly from those who sport themselves as advocates of progressive ideas. The ruthlessness of the middle-class persons has been exhibited in all its nakedness in this debate when it has come to a question of giving property to our daughters or sisters.

It has been repeated *ad nauseam* that it is not a question of men *versus* women, it is not a question that we do not love our daughters. It is not that we are grudging the giving of property to our sisters. Let me ask in all humility that all these arguments boil down to, except that we do not want to give anything to our daughters, sisters or mothers?

May I ask what will happen to the widow, if this Bill is passed with the amendment contemplated? The widow will get still less than what she is likely to get under the present system. Have we thought about the widows under this bill? If the Bill is enacted into law with the amendment moved by the hon. Minister, she will definitely get less than what she gets at the present moment and under this bill.

We hear arguments that if women are given shares along with sons in a Mitakshara family, the heavens will fall down on the earth, and this unfortunate planet will go to pieces. May I invite the attention of hon. Members to what is happening in Bengal, and in Assam and other Dayabhaga places? What is going on in that place where the matriarchal system is in vogue, wherefrom my sister Shrimati Khongmen hails? There, the youngest daughter gets the entire property of the parent. Is there more litigation in Shillong than there is in the plains? Definitely not. I am afraid the term 'joint Hindu family' has been used as a synonym for undivided Hindu family. Mitakshara recognises undivided Hindu families. But are families the less joint in Bengal and Assam and other places where the Mitakshara system is not in operation? I am sure that although Mitakshara is not in vogue in Bengal and Assam, at least as many families in these two States live in jointness as in other places or States. Go to Bengal. Go to Calcutta. You will see poor middle class families headed by a man who may be drawing Rs. 100 a month; with that he maintains a dozen of his nephews and nieces and other people. They are doing it. I am not opposed to jointness, because in a country like India where there are the millions, and where the people are poor, we cannot effect social insurance, old age insurance and all those things to the extent we desire to. Therefore, our jointness of the family is some sort of social insurance. I like it and welcome it. I only want that the other members of the family should also earn and contribute to the total earning of the family. Jointness is not a bad thing. But if some members depend on the earning members without themselves working and earning, that is the only objectionable element.

Therefore, when I hear the argument that the Mitakshara family system is the only family system that has flourished in India and there people are living in jointness and comparative security and comfort, I have to scratch my head and say that things are not quite bad with the Dayabhaga system, as well. Although the Mitakakshara system is not in vouge in Bengal, Assam and other smaller parts of India, there is jointness there and we have that social security, what I would call social insurance. There you will find the old, disabled, young orphan and a host of members in a family being maintained.

Therefore, I submit that when it is said that if we give a share to our women, there will be disintegration of the family, I have to disagree. It will not disintegrate the family. On the contrary, if our sisters and daughters get a share—let hon. Members think over this deeply—there will be greater co-operation. An hon. Member was asking; if there is only one bullock and three sons and a daughter, what is to be done? I say, if the three sons can utilise one bullock, the sister, daughter or the son-in-law can also utilise it by coming into a co-operative system or basis.

Shri Nand Lal Sharma: But he will have to take care of his own bullock also.

Shri Debeswar Sarmah: I can understand such argument coming from a certain section of people who really think in terms of old and do not see the new. They recite slokas to the effect that God is there where woman is respected. But when it comes to a question of giving property to the women, they say, 'no, no; the family will be disintegrated; the standard of living will be lowered'. Some others have said: बंटता जायगा

[Shri Debeswar Sarmah]

As if there will be fragmentation if property is distributed to one or two daughters only and not when distribution is effected between sons. All these arguments do not appeal to logic and reason. It has been argued that the standard of living will be lowered and that it would not be workable. If property can be distributed amongst sons, what is the harm in giving a share to one or more daughters? Why should we consider that whenever property is given to a daughter or the members of the family of the daughter, the son-in-law or the son-in-law's father will be hostile? That is not the case. On the contrary, things may improve. When it is known that the daughter will get a share out of the property, dowry may not be asked for by the prospective son-in-law or father-in-law because whatever will be given will have to come out of the share of the daughter's property. Considered from that standpoint, it will inure to the benefit of the society.

Taking the case of widows and the mothers also, if this Bill is accepted without the amendment proposed, I think it will be beneficial.

I have discussed the matter with those who have come to this Parliament from my State. We accord our wholehearted support to this piece of legislation.

Shri Sarangadhar Das (Dhenkanal-West Cuttack) : I am one who has claimed many a time that our Indian society is typified by the Himalayas. As the Himalayas cannot be moved by anyone, so is Indian society not amenable to movement. I repeat this today because in the course of the debate I have found confirmation of this view. I heard particularly from the other side, from the Members of the ruling Party, many of whom were in the vanguard of the freedom struggle and had made sacrifices and braved the onslaughts of the British—we used to hear this in the old days also when they were in the Central Assembly—that when it came to any social legislation, they were the most reactionary. It is fortunate for the country today that all those people who have been echoing the Prime Minister's slogan of a socialist pattern of society have exposed themselves to be the most reactionary people in this country.

In the first place, when we have given in the Constitution equality to women, when we have conceded to women universal franchise as in the case of men, when they complete 21 years of age, it goes without saying that equality in other spheres will flow from that franchise. That is what is happening; women are demanding equality in every sphere; they are demanding it even to the extent of getting into the administrative service and the police service where it will be very difficult for them to work. But the demand is there.

So when you advocate a socialist society, meaning equality in every sphere, —economic and social,—this is a corollary that women must be given equality. By opposing any kind of division of property for the women, my hon. friends are exposing themselves to the charge of being called the reactionaries of India.

Shri Bhagwat Jha Azad : Under what clause is he giving these humble compliments?

An Hon. Member : On every clause.

Shri Sarangadhar Das : Clause 6, if he will read it.

Shri Bhagwat Jha Azad : He has not read it. I have read it a hundred times. Let him know to whom he is talking.

Mr. Deputy-Speaker : Let not this dispute be decided in this way. We can have differences of opinion and interpretation.

Shri Sarangadhar Das : This interruption of my hon. friend's does not do any good.

Mr. Deputy-Speaker : The hon. Member need not go to that extent. I will see whether the interruption is good or not.

Shri Sarangadhar Das : After all, when we in India talk about property, I do not see where there is property. It is all bits of land. If you are going in for full industralisation, as I see evidence in the Second Five Year Plan, this landed property is of no value in comparison with what property you can make in the industrial society. Moreover, these lands are sure, within the next 10 or 15 years, to go into the hands of the tillers of the soil.

An Hon. Member : Fifteen years more!

Shri Sarangadhar Das : We, who are called gentlemen in the upper stratum of society, we who have lands, 100

acres, 1,000 acres or even more will not have that land with us. So, why worry about property, whether half of the son's share goes to the daughter or whether an equal share goes to the daughter?

Some Members have said that the objection to handing over property to women is that they will waste the property, that they are not intelligent and clever enough to take care of property. I entirely differ from this point of view because I have known, in various parts of India, that in a family when the head of the family dies or is incapacitated, it is the mistress of the House—whether she is in purdah or not, and even from behind the purdah—who manages the property, when there is no son or adult male member in the family. I believe that women take care of the property much better than men do. They only lack one quality, which is a bad quality; that is, unlike men, they cannot intrigue to deprive the widow or the orphan of some property. (*An Hon. Member* : Or a minor), or even a minor. That is different.

Then, there was so much talk about the joint family. There is so much respect for the joint family system. But, I wish to point out that during the last half a century, with the spread of western education, with a view to take up government service, the members of the family have left their homes and gone away to places 500, 1000 or even 2000 miles distant and are separated from the family. The family property is there all right but there is not the happiness of the joint family that there was half a century ago. So, in a way, the joint family has already cracked.

There is one other evil in the joint family system which I have always felt, and that is a handicap, particularly in Hindu society, for the growth (*Interruption*) of the community, because the joint family system encourages parasites. If there are 4 or 5 brothers, 2 or 3 work hard to maintain that property and to increase it, while there are two others who are lazy fellows and they say that from the time of conception they have a share in the family property and they must get food, shelter and clothing without doing any work. You cannot do anything.

An Hon. Member : Co-operation.

Shri Sarangadhar Das : My friend says, co-operation. But, co-operation does not mean supporting parasites. Co-operation means everybody works for all and all work for everybody. Without work, there cannot be any co-operation. It is a wrong notion that we have in worshipping the joint family system.

Shri K. K. Basu : There is the co-operation of the Congressmen.

Shri Sarangadhar Das : The sooner the joint family system goes, the quicker will this nation go forward socially and economically. That is coming with industrialisation; it is coming willy-nilly.

I shall not take up the time of the House because there are more speakers. My friends claim that I did not talk on clause 6. I fully support this measure, although it could have been still better. However, after all these years, a legislation has come which does justice to women and somewhat comes in line with the Directive Principles enunciated in the Constitution. I know this will be passed in spite of the opposition of my friends opposite, at least some of them. So, I do not worry about that. But, I think, every one should be happy that we, in this Parliament, are enacting a measure which is overdue and we should all be proud of the fact that we pass it.

Mr. Deputy-Speaker : Pandit Thakur Das Bhargava.

Shri Kasliwal (Ko'ah-Jhalawar) : Let me have two minutes because I have certain doubts.

Mr. Deputy-Speaker : I will surely give the hon. Member an opportunity if there is time left.

Shri Kasliwal : I only want two minutes, Sir.

Shri Tek Chand (Ambala-Simla) : May I make a request that you impress on the Members to talk on clause 6 rather than treat this as it were the first reading.

Mr. Deputy-Speaker : I have brought it to the notice of hon. Members many a time. Now, let us hear the hon. Member here.

Shri Mulchand Dube : Is there any method by which we, one on this side of the House, can catch your eye?

Mr. Deputy-Speaker : There are Members on this side who have caught the eye and they have had their turns. I assure the hon. Member that it is only patience that would pay.

Pandit Thakur Das Bhargava: Sir, I have given notice of amendments....

An Hon. Member: He talks on every measure.

Pandit Thakur Das Bhargava: The difficulty is, my name has been called.

Mr. Deputy-Speaker: Let the hon. Member not mind these interruptions.

Pandit Thakur Das Bhargava: I do not mind these interruptions and condemnations also.

I have given notice of amendments Nos. 36, 196 and 197 and also 213. After hearing the speech of my hon. friend, Shri C. C. Shah, the question arises whether the amendment given notice of by him and the hon. Minister should be accepted. Apart from that, Shri Shah and Shri Nathwani have given notice of another amendment on which Shri Nathwani has spoken. He has referred in his speech to clause 21 also, which is a very important clause, when we are considering the subject of clause 6. Clause 21 runs thus:

> "If two or more heirs succeed together to the property of an intestate, they shall take the property,—
>
> (a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and
>
> (b) as tenants-in-common and not as joint tenants."

The one question that is troubling me is this. Supposing this amendment of the hon. Minister and my friend is passed, what would happen to the joint family, as a result of the property having been divided according to clause 6. This is a very important question.

The first portion of this clause 6 runs thus:

> "When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:"

This is quite clear if there is no complication, if no daughter intervenes or no daughter's son intervenes etc. This is purely a question of the devolution of joint family property among coparceners. But further on, the proviso says:

> "Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, such female or male relative shall be entitled to succeed to the interest of the deceased to the same extent as she or he would have done had the interest of the deceased in the coparcenary property been allotted to him on a partition made immediately before his death."

Here also, there is no trouble. As soon as a person dies, there are the daughter and daughter's sons who succeed him. I take it that they come in and take away their property allotted to them in the schedule. What happens to the son who succeeds and the family of the son? Suppose there are two or three sons and they have got their own sons and they are a joint family. What happens to the joint family? Will the joint family continue as such or will it be disrupted? So far as the daughter and the daughter's son are concerned, I have no doubt in my mind that they will not be governed by the rules of Mitakshara law. They are succeeding to the property by virtue of this Act. So far as the Mitakshara law is concerned, those rules shall not apply to them. I think I am right in considering that this is what the amendment means.

If you kindly see the amendment to this proviso, you will come to the conclusion that it is not free from doubt. What is the precise meaning of this proviso? The amendment here reads:

> "Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship."

According to me, the plane meaning is that when once the succession is open, then in regard to the sons and grandsons also the rule of survivorship does not obtain. They will also be treated as if

they were tenants-in-common according to clause 21 and their family will be disrupted. I can understand that an inroad is being made into the joint family system by the introduction of daughters and daughters' sons. If the House agree with that, it is all right. So far as the rest of the family is concerned, it should be allowed to continue as joint family. In the hands of the son, the property received from the father is ancestral property according to the conception of any law, even according to the customary or Hindu law and, therefore, the joint family continues. I am assured that this proviso does not seek to disrupt the joint family. I am not in disagreement with the hon. Minister or Shri C. C. Shah. Yesterday, in his speech, the hon. Minister made it absolutely clear that the property should continue as joint property. I accept what the hon. Minister and Shri C. C. Shah said. But when the Judge comes to interpret this clause, their speeches will not be there to help me. I want it to be absolutely clear that so far as the daughter and the daughter's sons are concerned, they will not be governed by the rules of Mitakshara. They get it by virtue of this Act. But so far as the sons and grandsons are concerned, they will be the nucleus of the old family and they will get the ancestral property. Otherwise, it means that in the hands of the sons also, the property will cease to be ancestral property and the family will be disrupted. There will not be any survivorship even among those who belong to the family and who did not separate. This separation given in this section is only notional separation. It is not separation which ordinarily takes place in the families. I understand that those persons who would be affected by notional separation will have the right of succession to the property of the father. If that is so, then there is no reason why this notional separation should separate those people. I only want to point out that so far as these words go, they are not capable of this meaning. Therefore, I have moved my amendment No. 213 which says that so far as the proviso is concerned, it may remain as it is. It makes it clear that the daughter and the daughter's son will take away their share out of the property. I want to add :

> "and the rules of succession of Mitakshara law or survivorship shall not apply to such heirs"; and

By implication and by force of what we have got in clause 6, it would mean that so far as the original family is concerned, while the daughter and daughter's son take away their shares, the original family consisting of sons, sons of the deceased etc., as it was joint family before, shall continue to remain joint and there will be no disruption. My humble submission is that, otherwise there is no difference. So far as the property of son and daughter is concerned, if the House passes the Schedule they are welcome to do so. When the House is agreeable I am not the person to say : "No". At the same time, so far as the interpretation is concerned, I want that it may be clearly scrutinised. My friends here may say that whatever I am saying is also present in their minds. I do not know much of English language nor do I know much of interpretation. But my own fear is that this is capable of two interpretations and the other interpretation may be made in some cases. Therefore, I only submit that it may be made absolutely clear. There is no difference so far as the substance is concerned and therefore I say that no room should be left for doubts. As a matter of fact, the rules of survivorship will not apply if you consider section 21. There is absolutely no doubt in my mind that it will be construed as if the property is separate.

Shri D. C. Sharma : You are simply creating doubts.

An Hon. Member : Doubt is there.

Pandit Thakur Das Bhargava : My friend Shri N. P. Nathwani drew the attention of the House to clause 21. If you will kindly look to sub-clause (b) of clause 21, you will find that the interpretation to the contrary will be certainly made. The words here are : "as tenants-in-common and not as joint tenants". Two sons, if they succeed together, will become tenants-in-common. It means that what the hon. Minister had in mind will not be given effect to. There is a difference between an hon. Member and Shri C. C. Shah. He did not conceal that difference. Shri C. C. Shah and persons of his way of thinking do believe that the joint Hindu family may disappear. I have no quarrel with that. As a matter of fact, I sometimes feel that there will be no solution to the entire difficulty unless you take courage in both hands, as I submitted yesterday. As long as we agree to the stand taken by the hon. Minister, we should make it clear that we do not mean that by the very fact of the daughter and daughter's son taking away

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their shares the entire Hindu family will become disrupted. This may be made absolutely clear.

As regards the second explanation, the present Hindu law is that if a member of the coparcenary has separated already and partition had taken place, then subsequently he is not entitled to any property in the second partition because he has taken away his share and is not a member of the coparcenary body. In a coparcenary body there is no succession. There is only partition. He is not allowed to have a share in the second partition. This is the present law. The present law being this, this explanation is quite redundant and absolutely unnecessary. Even though it is redundant, if it gives satisfaction to my sisters and other friends, I will not stand in the way of its continuance. According to me, under the present law, it is absolutely unnecessary. This is what I have to submit in regard to the amendment brought before us by the hon. Minister and my friend Shri C. C. Shah.

Many things have been said here in regard to the Hindu joint family and the stand that we have taken. Many Members have been pleased to call us reactionaries. Many Members have stated that we are going against the cherished principles of the Congress Party. All that has been said yesterday and even today. But this is not the time that I should utilise for answering those charges. I do not care even what the charges are as long as I feel that I am behaving rightly. I do not care what the charges are. But one thing I may submit and it is this. Those who believe that the ladies of our country, that our sisters and daughters, should get rights in property should not be called reactionarises. The only question is, whether you should do it this way or that way. I yield to none in this House. It is very bad to call any person reactionary but to call Tandonji reactionary is impertinent and insolent. I can assure you this. Go through the entire legislation of the last 12 years. You will find that either we brought legislation to improve the condition of our women or to benefit the joint family and our sisters and daughters—in fact everybody. Such legislation was brought in regard to marriage and all other matters too. In this matter also I am perfectly sure that those who are supporting this measure for giving the rights to the daughters and sisters will feel that we have not condemned them. I have no quarrel with them, if they think that the rights should be given in this way. Opinions differ. I have never mentioned that our daughters and sisters should not get rights to property, On the contrary, I have been in favour of giving these rights in full measure, as full as that given for men.

I would now submit that we are making a mistake in regard to the limited estate. There has been a mention about the limited estate by some Members. They said that the women should get an absolute estate. I may submit here that I have sent in an amendment. It has got very great substance. I want the rights of the women must be the same as those of male members. I do not want to give the women more rights. Under the existing system, the rights of the males are also limited. If they are limited in the interests of the society, in the interests of one another, it would be wrong to enlarge those rights in the case of women and to give absolute rights in this manner—in the way in which even men do not enjoy. That is a wrong conception. If you do that, you will flounder on unchartered sect and repent for what you are doing.

Some Members said that they are going to give more rights to the daughters. It is wrong. It will react upon themselves. It is right to give those rights in the same measure as is given to the males. I am agreeable to that. But you want to proceed further. Here, I may very respectfully submit that those who do not agree with us should not run away with the idea that we are the opponents of any reform. I maintain that I am a party to the election manifesto of the Congress and I feel that I am absolutely right in behaving as I do now. Shri Raghoaih does not understand or chooses not to understand the position. May I tell him that as a matter of fact on the motion to refer the bill to the Select Committee I voted against such reference. He has unduly indulged in cheap criticism. But he must know the facts before he makes criticisms. It is a question of appreciation of the points. If he cannot appreciate, I cannot help it.

Shri H. G. Vaishnav (Ambad): I oppose clauses 5 and 6 as they are worded now, and as they have emerged from the Joint Committee and from the Rajya Sabha thereafter. They have been changed to a great extent. Not only are the changes not restricted to ordinary or minor aspects but the whole feature of the Bill has been greately changed.

That is why it is in the interests of the Members and of the public that these clauses are fully discussed now.

I have given my amendment No. 66 regarding the deletion of the explanation to clause 6 at page 4 of the Bill. Of course, when this explanation is deleted there might be some lacuna for the purpose of operating the main portions of this clause. But whatever lacuna is left, I think it has been taken care of or has been fulfilled by the amendment given by my hon. friend Shri C. C. Shah as well as by the Government amendment No. 201. What injustice would have been done by this explanation to the male heirs, has been done away with by the new amendment introduced by the Government. If some concrete instances are taken, we will see how unjust this explanation is.

I will take the concrete instance of a father leaving two sons and a daughter and property worth Rs. 9,000. I will explain what share the two sons would get if the explanation remains as it is and also if the new amendment is accepted. Suppose a son has separated during the lifetime of the father; let us call him S1. When he separates, naturally, he gets his share of Rs. 3,000. There remains now property worth only Rs. 6,000. When the father dies, there is the other son S2, a minor, and the daughter. According to the explanation, for the purpose of division of property, the share of the undivided male person will also be taken into consideration. That means that although S2 is undivided and has got a right to an equal share as S1, the share of S2 is also included in the share of the father. That means, the remaining property worth Rs. 6,000 will be equally divided among the two sons as well as the daughter, each getting Rs. 2,000. Now, S1 who has already got Rs. 3,000 again gets Rs. 2,000; *i.e.*, he gets Rs. 2,000 plus Rs. 3,000, whereas S2, the other undivided son, who is a minor, will get only Rs. 2,000. The daughter also will get Rs. 2,000. That means to say, that the divided son will get first his share plus Rs. 2,000 afterwards, that is property worth Rs. 5,000, while the other son and daughter will get each Rs. 2,000. That would be the most unequal distribution in every sense, if this explanation remains there.

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On the other hand, if this explanation is removed, this sort of injustice will not be there. If amendment No. 201 or 194 is accepted with all those provisions, I think the position will be altogether changed. In that case also, I will quote the same instance of a father leaving property worth Rs. 9,000, having two sons and one daughter. First, it is provided in the amendment that only the father's interest in the coparcenary property will be subject to distribution among the heirs, that is sons and daughters. Here, if any son is divided, say S1, in the life-time of the father, really he will get his share of Rs. 3,000. The remaining property worth Rs. 6,000 will be divided after the father's death. Suppose the father dies leaving undivided S2 and a daughter and property remaining is worth Rs. 6,000, what will happen? According to the Explanation given in the amendment, only property to the extent of the share of the father will be divided and nothing else. So, the father's interest in the property is Rs. 3,000. If partition would have taken place between the father and two sons, the two sons get Rs. 6,000 and the father Rs. 3,000. According to the amendment, after the death of the father, only property worth Rs. 3,000, his share in these coparcenary property will be distributed among the remaining heirs, that is to say, the son who was undivided and the daughter who is there. In the father's share of Rs. 3,000, each will get Rs. 1,500, that is S2 and the daughter. The son will have his share of Rs. 3,000. It is his share in the joint family or coparcenary property. There will be no injustice to anybody. The father's property will be equally divided among the sons and daughter as has been intended in the Bill. In this way, the undivided son will get more share that is his personal share in the coparcenary, Rs. 3,000 plus his share on his father's death, Rs. 1,500. The son who remained undivided with his father will be profited than the son who has already got partitioned. This provision is a very genuine one which will continue the joint family system. There will not be any division or disruption of the joint family as is feared.

It is provided further in the amendment that the son who has already separated in the life-time of the father will not be entitled to a share in the coparcenary property after the father's death. This is a very important provision. On the other hand, if the old Explanation remains as it is, the divided son will get a share in the property at the time of the division in the life-time of the father

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and later on again an equal share after death of the father along with the other undivided son and daughter. That injustice has been removed by the Explanation given in the proposed amendment. That son who is already separated from the father in his life-time will not be entitled to a share in the coparcenary property according to the provisions of this Amendment. In this way, this amendment proposed by Government is a very just one and as has been said it is a very good compromise between the two extremes of those who oppose this Bill tooth and nail and those who support it. My submission is when we have reached this compromise and as the amendment accepts the principle of giving equal share to the daughter, it serves the purpose in every respect. Some injustice will be felt, to the widows as has been expressed by some hon. Members, because of this amendment. The widow will get a smaller share, really it is so. To a certain extent there will be injustice done to the widow because according to the present law the widow gets an equal share with the son, but, as has been pointed out just now, whatever the share the widow gets under the present law, it is only limited interest that she gets. Under this Act the share which will be allotted to the widow will give her absolute right, and that is a benefit. That is some extra right and it compensates her for the loss that she might suffer because of this amendment. My submission is that the amendments proposed by my friend 194 as well as 201 are thoughtful and considerate ones and should be accepted unanimously by this House.

Mr. Deputy-Speaker : Shri Deshpande.

Shri V. G. Deshpande *rose—*

Mr. Deputy-Speaker : Before he speaks, I have to say something.

In the morning the Speaker had announced those Members who are very much interested in the allocation of time might sit together and just decide among themselves how the other clauses are to be treated and what time is to be given to each group clauses. This is what they have produced and put before the Minister. I hope he also agrees to this allotment :

Clauses	7 to 10	-	2 hours
"	13 to 15	-	½ hour
"	16 to 17	-	2 hours
"	18 to 23	-	1 hour
"	24 to 26	-	2 hours
"	27 to 33	-	1½ hours
hedule		-	2 hours

I hope this meets with the approval of the whole House.

Pandit Thakur Das Bhargava : May I suggest this is not acceptable to us so far as the Schedule is concerned. The Schedule is the soul of the Bill and two hours are absolutely insufficient. Similarly, clauses 17 and 32 are very important ones. I cannot understand how.....

Mr. Deputy-Speaker : Does the hon. Member propose reduction in some other clauses?

Shri Kasliwal : There will be nothing in clauses 12 to 15. It should be half an hour instead of 2 hours.

Shri Seshagiri Rao : Increase one hour more for clauses 16 and 17 and 2 hours for the Schedule. That will be all right.

Mr. Deputy-Speaker : Clauses 7 to 10—2 hours. Is that agreed?

Hon. Members : Yes.

Mr. Deputy-Speaker : Clauses 13 to 15, half an hour.

Hon. Members : Yes.

Mr. Deputy-Speaker : Clauses 16 and 17, 2 hours.

Shri T. S. A. Chettiar : That is not sufficient.

Pandit Thakur Das Bhargava : So far as clause 8 is concerned, it deals with the Schedule. You will have two hours for clause 8 and two hours for Schedule together.

Mr. Deputy-Speaker : Clauses 7 to 10 and the Schedule, 4 hours. That would suffice.

Pandit Thakur Das Bhargava : Yes.

Mr. Deputy-Speaker : That is all right then. I think this is approved by the House, but this would be contingent on our sitting upto 6 O'clock on the 4th and the 7th. That we will do.

Pandit Thakur Das Bhargava : At the same time, the Speaker has been authorised by the Business Advisory Committee to extend the time.

Shri Patashar : It is being extended.

Pandit Thakur Das Bhargava: Why should we extend the daily sitting till 6 and 7 p.m.?

Mr. Deputy-Speaker: Really, something is being extended. We are having more time than 35 hours. We will have 37 hours now. If hon. Members agree, we might have a time-limit of ten minutes for each, since much has been said already. If that is done, then we might be able to accommodate one more hon. Member.

Some Hon. Members: Five minutes will be all right.

Shri V. G. Deshpande: I have an amendment to this clause, which seeks to delete the proviso to the clause. The effect of this amendment would be complete removal of the Mitakshara property from the scope of this clause. As I had said earlier, I have a fundamental difference of opinion with the supporters of this Bill. But today, I am not standing here for demonstrating that difference of mine with the supporters of the Bill. I am standing here in order to request the Minister of Legal Affairs and other Members to give some cool consideration to the wording and drafting of the Bill. I had requested you to see that the Minister of Legal Affairs was called upon to explain his amendment in the beginning, so that the discussion could be carried on in the light of what he had to say as to the exact implications of his amendment. Of course, Shri C. C. Shah was trying to explain that amendment, and to some extent, our demand was met. But I do not understand why the Minister should wait till the end and then give answers, which, according to us, are not sometimes satisfactory.

Shri Pataskar: That is a more democratic procedure.

Shri V. G. Deshpande: That may give some good scoring points. But we have got some genuine difficulty here.

This is a social measure of very far-reaching consequences. My hon. friend Pandit Thakur Das Bhargava had pointed out some difficulties. To me also, those difficulties did occur. I want to ask in all humility what the implications of the Minister's amendment are. I want this measure to be as perfect as possible. Differences may be there on whether we should give a share to the daughters, or to the widow, or to the daughter-in-law and so on. With all my differences of opinion, even if they be reactionary, I want that the drafting of the clause under which daughters would be given shares, would be as faultless as possible.

One difficulty was pointed out by my hon. friend Pandit Thakur Das Bhargava. I would like to point out my difficulty now. Let me take a concrete instance. Suppose there is a father, and he has two sons and two daughters. Suppose he has got property worth Rs. 40,000. Suppose the father dies. Then, according to this provision, we have a notional share of the father which will be a little more than Rs. 13,000. I want to know what his sons would get and what his daughters would get. According to me, the two daughters, the two sons, and the widows would share equally this Rs. 13,000. When they get that share, Pandit Thakur Das Bhargava very pertinently asked the question.....

Shri Pataskar: I am going to reply to that question. I appreciated it.

Shri V. G. Deshpande: I want to ask an additional question. My questions are generally not answered. It is merely said that Deshpande states 'Manu says', and poor Manu is again abused. My question to the Minister is this. When such questions arise, will it lead to partition.....

Shri Pataskar: May I point out that there is no justification for saying that I am not amenable to replying to the questions which the hon. Member puts.

Mr. Deputy-Speaker: He has only said that he has a complaint that his questions are not generally answered.

Shri Pataskar: To me, all the Members are alike, whether it be Shri V. G. Deshpande, Pandit Thakur Das Bhargava or any other.

Mr. Deputy-Speaker: Perhaps, that was said in a lighter mood. Now, the hon. Member can continue.

Shri V. G. Deshpande: Take an instance. The son dies. Father is living. The son also has got two sons. When the son dies, his interest in the property would devolve upon the sons and then when that interest goes to his sons and daughters, will those two grandsons be separated from their grandfather? I say this because this difference has been

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pointed out by some change in the wording. Apart from deleting the explanation and having another explanation, a change is made here. Here it was said that those females or males inheriting through the females shall be entitled to succeed to the interest of the deceased to the same extent as he or she would have done. Here a change has been made. Instead of saying 'females or males inheriting through females', they say that the interest of the deceased in the coparcenary property shall devolve by testamentary disposition or intestate succession, as the case may be under this Act, and not by survivorship.

What we really wanted was that in the case of Mitakshara property, some arrangement should be made for daughters, widows or widowed daughters-in-law. But here by this new draft, they have made complete devolution of the interest of this coparcener in the joint family property. By this change, we have at once moved to a stage where the sons, grandsons or whoever may be inheriting through him, would be partitioned from the joint family property. I would like to know whether this contention is accepted by the hon. Minister. I feel that if at all the daughter is to be given some share in the Mitakshara property, that should be done by the wording which was proposed by the Joint Committee. That would create less trouble and less disintegration in the joint family property. Of course, the explanation may be omitted and the new explanation should be added. Then this defect will be rectified.

The second suggestion I would like to make is this. It was pointed out here—and I was shocked—that the widow's position which was improved as a result of the Bill which was moved here by Dr. G. V. Deshmukh, who was praised by the Minister of Legal Affairs yesterday,—we saw that the widow got the same share as the sons got—would now be adversely affected. As I calculate, the widow may get a much smaller share by this Bill. Suppose there are two sons and two daughters. The widow would normally get one-third share, but by the new condition the widow would get one-twenty-fifth share. This is the situation. In Indian Society, the position of a daughter who is married is not so bad as that of a widow; the position of a widow is generally very bad. All our reformers had been preaching that some provision should be made for the widow. If by this Bill, which is meant to be a *magna carta* for the women of India, the position of the widow is to deteriorate, I think it is a sad state of affairs.

Some Members may ask : what should be done? I am not raising this as a matter of obstruction. Some people think that these are insurmountable difficulties. I do not think so. It is possible for us to sit together and devise some method by which we can ensure that when partition is effected, the widow will get as much share as the son; we can also ensure by suitable wording that the daughters will share according to this method. Some such wording can be provided, provided we have got the patience. But here even one hour's delay seems to be a great calamity. If some Members can sit together, and by tomorrow, we see that some provision is drafted whereby the partition of the son should not be made inevitable and as soon as the son dies, the grandson should not be thrown out of the joint family, and the share of the widow should not be reduced, that would be a good thing. I do not think that the legal language is so defective that when all of us want this, no words can be found, that no draft can be made, that these anomalies cannot be removed.

Therefore, I would request the Minister of Legal Affairs to explain this. I would appeal to him to accept or even make such amendments whereby these defects can be removed.

Shri Kasliwal : When is the Minister proposed to be called, Sir?

Mr. Deputy-Speaker : At six O'clock. Let us finish this clause today. If necessary, we can sit up to half past six. I suppose there will be no objection.

Shri Bansal : Are we sitting up to seven O'clock?

Mr. Deputy-Speaker : The Minister will take only half an hour.

Shri Pataskar : Even less.

Shrimati Sushama Sen : If the hon. Minister were to give us the purport of his amendment, it would serve a useful purpose.

Mr. Deputy-Speaker : Let us hear the hon. Member who has been called.

Shri Mulchand Dube: I support whole-heartedly the principle on which the Bill is based. But, when I examine the contents of the Bill, I find that they are mischievous. For instance, two important things seem to have been entirely overlooked in framing this Bill. The first is that the daughter is married into another family and becomes part of another family. The second thing is that the Mitakshara system of holding joint family property is also given the go-by.

The hon. Minister has said, times without number, that he is not against the coparcenary system and by this Bill he has no intention of doing away with that system. That is all to the good because this system has existed from time immemorial and has, in fact, helped the country towards the socialist pattern. For instance, so long as the Government is unable to implement the Directive Principles of State Policy, so long as there are no old age pensions, so long as there is no social insurance, so long as there are no unemployment doles, it is the joint family that has provided all these things to the people living in this country. Therefore, to do away with the joint family system, I submit, would be a very great mistake. If I may say so, the hon. Minister has not given sufficient attention to the provisions of the Bill.

I have, by my amendment No. 200, moved that the proviso and the Explanation appended to clause 6 should be deleted. I have heard my hon. friends criticising the Bill and pointing out the numerous shortcomings with which it bristles. I do not, therefore, want to dilate upon them or to give specific instances in which injustice is being done. But, I do wish to point out that the proviso and the Explanation are destructive of the joint family system. They are destructive in this way. In the proviso it is provided that the share of a member of the joint family who dies intestate will go to firstly to heirs or those specifically mentioned in class I. The condition is that he must die intestate. Then, every member of the joint Hindu family has been given the power to make a will.

Let us examine the thing in detail. Supposing, there are 4 members in a joint Hindu family. One of them makes a will, say, five years before his death. During those 5 years, he will be entitled to take the property of those persons, who died within those 5 years by survivorship. When it comes to succession to his own property, the other members cannot get it because he has already bequeathed his property. If a member is allowed to bequeath his property, then, this right will also be taken advantage of by other members and the result will be that it will sound the deathknell to the coparcenary property and to the Mitakshara system of joint family. Up to this time, in no part of the country, a will is permitted. Alienations are certainly permitted in Madras, Bengal and Bombay. In the rest of the country, a member of the family cannot even alienate his property. That is the only method by which the joint family can be preserved. Once you give the power of alienation, then there is the end of the joint family system. Even though Government does not want to end or destroy that system, it is doing it because it does not clearly see the effect of the provisions made in clause 6. The proviso, explanation, etc. appended to clause 6 sound death-knell of the joint family system. Therefore, the amendments sought to be made by the Government and by Shri Bhargava or Shri Shah, are all useless. Unless we say that we do not want the joint family system, these amendments are absolutely no good. The whole thing should, therefore, go, lock, stock and barrel, including the proviso and the explanation. The joint family system should remain.

With regard to the rights or interests given to the daughters, the Bill as it was originally framed did not refer to the coparcenary property at all. It was only after the Bill went to the Joint Committee that the provision in regard to the inheritance of the daughters and others, as mentioned in clause 1, was introduced. Even in the coparcenary, the widow has got a share. The daughter-in-law also gets an interest. The son's widow and the other daughters also have got an interest in the joint family property according to the law as it exists. It is only the daughter who does not get a share in the joint family property. If it is intended to give a share in the joint family property to the daughter, it should not be done by this Bill which refers to intestate succession. This should be included in the next Bill that is about to come and that will deal with the joint family property and partition. They have tried to introduce that provision in this Bill. It is a mistake which they have committed. They have got into the wood

from which they find it difficult to extricate themselves. Amendment after amendment is coming in, resulting in difficulties. The rights of the daughter could have been safeguarded by making this amendment in the rights of the coparceners in the joint family when that Bill comes before this House. They are already members of a joint Hindu family but they are not coparceners. When you introduce the next Bill which would deal with the joint family and partition, only then, all the females, including the daughters, should be made coparceners so that they may have a share.

The only qualification that I would put in regard to the daughters is that the daughter's share should be terminable on her marriage. So long as she is unmarried, she should have the same share as the son. Once she gets married, her share should cease because she would be getting her share in her husband's property. One wrong step is leading to many with the result that we are getting into a morass from which there seems to be no method of extricating ourselves.

The amendment that was moved by Shri C. C. Shah was opposed by Pandit Thakur Das Bhargava. The amendment that was moved by Shri Pataskar is sought to be further amended by Pandit Thakur Das Bhargava. All this happens simply because a wrong step is being taken. If this had only been included when we were dealing with the joint family and joint family property, the whole thing would have been clear and there would have been no difficulty.

Then,.....

Mr. Deputy-Speaker: Now the hon. Member should not start any new point.

Shri Mulchand Dube: Is my time over?

Mr. Deputy-Speaker: Yes.

Shri Mulchand Dube: Then I resume my seat.

Shri Kasliwal: Shri C. C. Shah tried to explain the provisions of the new amendment suggested by Shri Pataskar as well as by himself, but in Shri Shah's exposition there was something silent and that is the major point. Shri Shah has not at all said anywhere in his speech as to what is the character of the property that will now be succeeded by the male members. Now, let me make it clear. Under the old provisions of the Bill, the rest of the property except with regard to the female heir would devolve by survivorship. But in this case the entire property, if a female or a male claiming through a female intervenes, goes by succession. To say that this property is to go by succession and that property is to go by survivorship has no meaning. I want the hon. Minister to make it clear as to what is the character of that property in the eye of law.

An Hon. Member: The Minister is not here.

Shri Kasliwal: Shri Venkataraman is here and he will try to understand me.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): It will be duly conveyed to him.

Shri Kasliwal: So far as the first part is concerned, the object was that the female would succeed to the interest of the father or the husband. Now, here the position is very difficult. The scope of succession has been considerably enlarged. It is not as it was provided in the Bill. The position now is that the interest of the deceased in the Mitakshara property shall devolve by succession, except, as I have said, when a female or a male claiming through a female intervenes.

With regard to females the position has been made clear by clause 16 where it has been said:

> "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."

So far as the males are concerned, it is not anywhere made clear. In the original Bill it was obvious that joint family property will go by survivorship to the males. But now they say, if a female or a male claiming through a female intervenes, then the property will go by succession. Therefore, I ask, what is the character of that property which now goes by succession to male owners.

If the property, as it is said is coparcenary property that goes to the male owners, then as Pandit Thakur Das

Bhargava has said. there is no meaning in having an explanation to it, because if a coparcener has gone out after having taken shares what is the idea in saying :

> "Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased to claim on intestacy a share in the interest referred to therein."

Where a person has gone out of the coparcenary, he cannot claim anything at all in the rest of the joint family property. But if it is intended that the character of the property changes by succession, then I submit that explanation (2) is intended to do something which it was never meant to do. It has been explained to us that so far as separate property or self-acquired property is concerned, it has been clearly saved. If the character of the property changes in this way, that it acquires the character of self-acquired or separate property, then I submit that explanation (2) comes into operation. That means, separate property or self-acquired property is not saved. On the contrary, with explanation 2 the position will be this : henceforth the male owner who has separated will not be entitled to a share in the separate or self-acquired. I believe this is not the intention of Explanation 2. Therefore, I feel that either Explanation 2 is redundant or it is such that it was never the intention of the framers to make it so.

Mr. Deputy-Speaker : Shri Nand Lal Sharma will speak now. He will please condense his remarks.

Shri Nand Lal Sharma : Ten minutes was the time fixed for each Member. Further, was the previous speaker asked to condense his remarks?

Mr. Deputy-Speaker : I am asking the hon. Member to condense his remarks within the limited time available. The hon. Member might straightway proceed with his speech, so that no time will be wasted.

श्री नन्दलाल शर्मा : धर्मेण शासिते राष्ट्रे न च बाधा प्रवर्तते नाधयीब्याधयश्चैव रामे राज्यं प्रशासति। जहां तक मैं समझता हूं वर्तमान विधेयक का प्राण इस धारा ६ में है। भारत का अधिकतर भाग, बंगाल और आसाम को छोड़ कर, मिताक्षरा के द्वारा शासित होता है और मिताक्षरा पद्धति याज्ञवल्क्य स्मृति द्वारा सम्पादित होती है, और याज्ञवल्क्य स्मृति वेदों से सम्बद्ध है। इसलिये इसे हमारे धर्म शास्त्रों में मुख्य स्थान प्राप्त है। आज उसका अन्त करने की चेष्टा की जा रही है और यह कहा जा रहा है कि हम उसकी रक्षा कर रहे हैं। कई माननीय सदस्यों ने कहा कि धारा ६ का प्रावीजन (उपलब्ध) मिताक्षरा की रक्षा करने के लिये रखा गया है। मेरा तो विचार है कि इस प्रावीजन को रख कर मिताक्षरा को समाप्त किया जा रहा है। जहां ज्वाइंट फैमिली प्रापर्टी (संयुक्त परिवार की सम्पत्ति) को तोड़ने की चेष्टा की जा रही है जिसमें कि वह प्रापर्टी टूट कर बाहर जाये और जिनका बर्थ राइट (जन्म सिद्ध अधिकार) से उस प्रापर्टी से सम्बन्ध नहीं है उनका इंटरेस्ट (हित) पैदा किया जा रहा है। ऐसी स्थिति में ज्वाइंट फैमिली प्रापर्टी कैसे रह सकती है और इसका मिताक्षरा से क्या सम्बन्ध है।

दूसरे हिन्दू माता के नाम से बार बार कह जा रहा है कि हम उसको बराबर के अधिकार प्रापर्टी में देना चाहते हैं। मुझे यह कहते हुए खेद होता है कि इस धारा द्वारा हिन्दू माता को कोई अधिकार नहीं दिया जा रहा है। इस सम्बन्ध में पहली बात तो यह कही जा रही है कि हम विवाहित लड़की को पिता की जायदाद में बराबर का अधिकार दे रहे हैं। इसका परिणाम यह होगा कि अगर एक लड़की अपने पिता की जायदाद में से हिस्सा लेगी तो उसके श्वसुरालय से उसकी ननद अपना हिस्सा ले जायेगी और उस लड़की के लिये प्रापर्टी उतनी ही रहेगी। हां इस धारा से एक अनहैल्दी कम्पिटीशन (अस्वास्थ्यकर प्रतिस्पर्धा) समाज में पैदा हो जायेगा। और मैं समझता हूं कि इससे समाज का विघटन ही होगा।

दूसरी बात माता के लिये यह कही गयी है कि इस धारा का जो संशोधन किया जायेगा संशोधन २०१ और संशोधन १९४ द्वारा, उससे माता को अधिक हिस्सा मिलेगा। लेकिन मेरा दृढ़ मत है कि इन संशोधनों के द्वारा माता को उसका अधिकार देने की ईमानदारी से चेष्टा नहीं की गयी है। इससे हिन्दू देवी का भाग बहुत कम हो जायेगा।

पंडित के० सी० शर्मा : यह तो ईमानदारी पर हमला किया जा रहा है।

उपाध्यक्ष महोदय : माननीय सदस्य इन इंटरप्शन्स (अन्तर्वाधाओं) का जवाब न दें और अपनी स्पीच जारी रखें ।

श्री नंदलाल शर्मा : दूसरी बात यह है कि मिताक्षरा की समाप्ति की बात अधिकतर उन माननीय सदस्यों ने कही है जिनका कि मिताक्षरा से सम्बन्ध नहीं है । हम स्वराज्य की लड़ाई के दिनों में कहते थे कि स्वराज्य हमारा बर्थ राइट है । मैं पूछता हूं कि यह बर्थ राइट की कल्पना मिताक्षरा के सिवा दुनिया में और किस सिस्टम (प्रणाली) में मिल सकती है ।

श्री फिरोज गांधी (जिला प्रतापगढ़, पश्चिम व जिला रायबरेली, पूर्व) : पटाक्षर सिस्टम में ।

श्री नंदलाल शर्मा : यह कोई नया सिस्टम लागू हो सकता है । पंजाब में कस्टमरी ला (रूढ़िगत विधि) के रूप में मिताक्षरा पद्धति को माना जाता है । बहुत से मुसलमान भी जो कि पंजाब में धनवान बने हुए हैं उनको भी मिताक्षरा सिस्टम रक्षा प्रदान कर रहा है, और इसको कस्टमरी ला के नाम से लागू किया जाता है ।

अब यह कुतर्क दिया जाता है कि हमको सोशलिस्टिक पैटर्न की सोसाइटी (समाजवादी प्रकार के समाज) में प्रापर्टी को एक्यूमुलेट (संचित) नहीं होने देना है । इसलिये हम नहीं चाहते कि कोई बहुत धनवान हो । तो क्या इसका अर्थ है कि सबको दरिद्र बनाया जाये ।

यह एक दृष्टिकोण हमारे पूर्वजों का था कि इस सम्पत्ति की सुरक्षा कैसे हो ? और उसकी रक्षा केवल इस ज्वाइंट फैमिली सिस्टम (संयुक्त परिवार पद्धति) से हो सकती है और इसके सिवाय दूसरा कोई मार्ग नहीं था । आज उस संयुक्त परिवार प्रणाली को तोड़ कर हमने हिन्दू जाति के साथ क्या अन्याय किया है, यह अभी हमारे एक बंधु ने स्पष्ट कह दिया । आज गांवों में रहने वाली करीब ९० प्रति शत जनता धनवान नहीं है और यह स्पष्ट बात है कि उनकी बहनें और बेटियां उनके पास से कोई विशेष सम्पत्ति ले जाने वाली नहीं हैं । अभी तक जो भाई लोग अपनी अपनी बहनों के विवाह के लिये कर्जा तक अपने ऊपर ओढ़ कर उनका योग्य तथा अच्छे वर के साथ विवाह करते थे, इस विधेयक के द्वारा मिताक्षरा कानून में खुल्लम खुल्ला हस्तक्षेप करने से एक तो सम्पत्ति के टुकड़े टुकड़े हो जायंगे और सम्पत्ति के प्रश्न को लेकर आपस में झगड़े बाजी और द्वेष भाव फैलेगा और हिन्दू समाज में बड़ी अव्यवस्था फैल जायगी ।

मेरा इस सदन और मंत्री महोदय से निवेदन है कि अगर इस हिन्दू उत्तराधिकार विधेयक को आपको पास करना ही है तो जो संशोधन पंडित ठाकुर दास भार्गव ने दिया है उसकी शब्दावलि उस संशोधन की शब्दावलि से कहीं अच्छी है जो कि आपके सामने उपस्थित है । संशोधन के अंदर किसी प्रकार की शंका नहीं होनी चाहिये कि हम वस्तुतः उसे संयुक्त परिवार प्रथा की प्रापर्टी बनाने वाले हैं अथवा उसको सेप्रेट प्रापर्टी (पृथक सम्पत्ति) सेल्फ एक्वायर्ड (प्रापर्टी (स्वर्अर्जित सम्पत्ति) में ही उसको विल (इच्छा-पत्र) करने का अधिकार दे रहे हैं । संयुक्त परिवार प्रणाली के द्वारा विल करके अपनी आने वाली संतान को वह डिसइनहैरिट (उत्तराधिकार से वंचित) नहीं कर सकता है क्योंकि यह उसका जन्मसिद्ध अधिकार है । उस जन्मसिद्ध अधिकार को जहां हमने यह कह दिया कि टैस्टामेंटरी (इच्छापत्रोक्त) के द्वारा हटाया जा सकेगा तो अब तक के जन्मसिद्ध अधिकार को हम समाप्त कर देते हैं । इसलिये हमारा यह कहना है कि यह अधिकार जो मिताक्षरा सिस्टम के अन्दर किसी को नहीं दिया गया था और विशेष कर के आप ने चूंकि तलाक प्रथा को स्वीकार किया तो तलाक को स्वीकार करने पर पहले की स्त्री से जो संतान है उस संतान के प्रति पिता का कोई प्रेम नहीं रह जायगा और यदि नई स्त्री उन पुत्रों को डिसइनहैरिट करना चाहे और इस टेस्टामेंटरी के द्वारा अगर उनको डिसइनहैरिट कर दिया गया तो मैं समझता हूं कि बहुत अनर्थ होगा और समाज का केवल विघटन ही नहीं होगा बल्कि और भी कितने ही अनर्थ होंगे । इसलिये मैं समझता हूं कि यह चीज चाहे पाटस्कर साहब की बुद्धि हो, चाहे सारे कैबिनेट की बुद्धि हो और चाहे गवर्नमेंट की बुद्धि हो अगर उसका मार्गदर्शक शास्त्र न हो तो उसका परिणाम कल्याणकारी सिद्ध नहीं हो सकता । साथ ही धर्मशास्त्र के शब्द से चिढ़ने वाले लोगों को यह भी समझ लेना चाहिये कि संस्कृत में "लॉ" का अर्थ ही धर्मशास्त्र है और धर्मशास्त्र विभाग यह आपकी लॉ मिनिस्ट्री का ही नाम है ।

वेद स्मृतिः सदाचारः स्वस्य चप्रियमात्मनः
एतच्चसुविधं प्राहुः साक्षाद्धर्मस्यलक्षणम् ।

वेद स्मृति और सदाचार इन तीनों का खंडन करने के बाद यदि हम केवल अपनी बुद्धि के बल से करोड़ों व्यक्तियों के ऊपर कोई लॉ (विधि) लादना चाहेंगे तो मैं समझता हूं कि वह आज नहीं तो कल जरूर फेल होगा और उसके जन्म में ही उसकी मृत्यु होगी । इन शब्दों के साथ मैं अपनी बात समाप्त करता हूं ।

Shri Seshagiri Rao: I have given amendment No. 165. There are two points which have weighed with our hon. Minister in drafting the present clause 6. They are: protection of the present joint family system and the giving of equal rights to daughters in the Mitakshara joint family. It is too late in the day to question the giving of equal rights to daughters. The needs of society are such that we have to give equal rights to daughters. That is also dictated by our Constitution. The present effort to meet these two needs has resulted in clause 6. The question is, does this clause meet the two needs or is it going to create complications.

As has already been pointed out, it creates a sort of a discrimination between a divided son and an undivided son. Not only that. It also militates against the fundamental principle that property once vested cannot be divested. For these reasons, clause 6 was not acceptable. I have given my amendment to omit the Explanation. Of course, that would meet to a great extent and alleviate the troubles that this clause creates. But, the present amendment given by the hon. Minister is the nearest possible solution to this complication and I think it meets all possible needs of today.

It has been objected upon one ground namely that the widow will get much less. When we are making such inroads on the joint family system by introducing the Gains of Learning Act and also by bringing all these things, it does not matter if the widow gets a little less because without making such inroads, we cannot accommodate the rights of daughters in the joint family. When I heard my hon. colleague Pandit Thakur Das Bhargava, I agreed with him that the present amendment rather creates a doubt whether the sons will take as survivors or whether the family will be joint or not. To clarify that doubt, I should think that a proper amendment should be made to clause 21 relating to mode of succession. That would meet the case.

Pandit K. C. Sharma: Sir, I request the hon. Minister through you to examine my amendment No. 202 which reads:

for lines 25 to 36 *substitute*:

"Provided that a daughter and her children will be deemed to be members of the Hindu coparcenary in the same way as a son or his children."

Every thing else in the section should be omitted. My respectful submission is this. The underlying idea of the Bill is that the daughter should be treated as a son. For the purpose of getting a share in the coparcenary property, she may be treated as one of the sons. All other provisions *ipso facto* would be unnecessary. I agree with the amendment of the hon. Minister. But, my respectful submission is that my amendment is much more conceptual and juristic in expression than that of the hon. Minister which is descriptive and explanatory. It would be much better to accept my amendment.

Shri C. C. Shah: What about the widow or other female heirs in class I?

Pandit K. C. Sharma: They will go according to the schedule.

Shri C. R. Chowdary: It appears to me that the consensus of opinion is in favour of accepting amendment No. 201, sponsored by the Minister piloting this Bill. If this amendment is accepted and clause 6 stands as amended, I have got my fears that it would be a source of much trouble to the Mitakshara family members. Not only that. It would cost them much to get things decided in courts of law in order to clear their doubts.

One of the doubts is this. I would draw the attention of the Minister to amendment No. 201, Explanation 2. According to this explanation a divided son will be barred from inheriting the properties of his father who has died as a coparcener with his other sons. But the divided son's widow will inherit along with the other sons, as she is listed in Class I of the Schedule along with son, daughter and the rest of the heirs. The son who is divided, if alive, will be debarred, but if he is not there by the time his father dies, his widow will come and participate along with the

[Shri C. R. Chowdary]

undivided sons, the daughter and the daughter's sons and the rest provided in Class I of the Schedule. Therefore, is it the intentions of the authors of this Bill to allow the son's widow to inherit along with the undivided son the property of her father-in-law? I want to have an explanation from the Minister to clear this doubt.

Mr. Deputy-Speaker: Ch. Ranbir Singh. He will have only two minutes.

चौ० रणबीर सिंह : मैं मंत्री महोदय के संशोधन का समर्थन करने के लिये खड़ा हुआ हूं । बहन रेणु चक्रवर्ती ने बोलते हुए कहा था कि यह विधेयक स्त्री जाति के साथ धोखा है । मैं पूछना चाहता हूं कि क्या यह सत्य नहीं है कि जब अब से पहले कोई भी बड़ा हक स्त्रियों को जायदाद के ऊपर नहीं था, अब उनको उस पर हक ही नहीं दिया जा रहा है बल्कि असल में बात ऐसी है कि अब उनको बाप की जायदाद में भी हक होगा और पति की जायदाद के ऊपर भी हक होगा । दूसरे मानों में आज अगर कोई भाई यह गिला करे तो शायद किसी हद तक जायज हो सकता था, लेकिन बहनों के लिये शिकायत करने की इस वक्त कोई गुंजायश नहीं है । अगर वह इस को बनिये की तौल से ही नापना चाहे तो बहस मुबाहसे की बात भले ही हो जाये वास्तव में समझ में आने वाली नहीं होगी । स्पष्ट है कि बहनों को भाई के मुकाबले में ज्यादा हक मिलने वाला है ।

यहां पर मैट्रिआर्कल सिस्टम, अर्थात् मातृ शासन क्रम, और पैट्रिआर्कल (पित्रपक्षीय) सिस्टम की बात कही गई और दोनों का मुकाबला किया गया । जहां तक मेरा खयाल है, हमें कम से कम इस सम्बन्ध में कोई ऐतराज नहीं हो सकता । मैट्रिआर्कल सिस्टम हो या पैट्रिआर्कल दोनों में एक ही बात है । फर्क इतना है कि एक में लड़की का प्रभुत्व है और दूसरी जगह लड़के का । लेकिन बात वैसी की वैसी बनी रहती है ।

कुछ लोगों ने फ्रैगमेंटेशन आफ होल्डिम्स (धृतक्षेत्र अपखण्डन) की बात कही । अगर वह सिर्फ बड़ी बड़ी जायदादों और साहूकारों की सम्पत्तियों तक महदूद रहे तो मुझे कोई ऐतराज नहीं है । लेकिन जो कानून बन रहा है वह गांवों के ऊपर भी लागू होगा, वह गरीबों के ऊपर भी लागू होगा । आप जानते हैं कि इस देश के अन्दर ७० फीसदी, आबादी में से मैं कहूं तो ८० या ८५ फीसदी, किसान ऐसे हैं जिनके पास पांच एकड़ या उससे कम जमीन है । इस कानून के पास हो जाने से जिन भाइयों के पास पांच एकड़ जमीन से कम है उनकी जमीन के टुकड़े हो जाने का भी डर है । लेकिन मुझे इसका डर ज्यादा नहीं है । क्योंकि जहां पर चार भाई एक बहन हैं, वहां पर पांच भाई होते तो भी उनमें आपस में बंटवारा होता है । लेकिन यहां पर सवाल यह है कि इस तरह से जो जमीन के टुकड़े होंगे वह एक ही गांव में नहीं रह जायंगे बल्कि अगर दूसरी जगह बीवी जायेगी जो कि उस गांव से चालीस मील हो, तो एक टुकड़ा वहां पर होगा जहां पर लड़की पहले से रहती रही ह एक टुकड़ा वहां पर होगा जहां पर वह शादी के बाद जाती है ।

आगे चलकर ऐसा भी हो सकता है कि दस पांच साल में उस जायदाद का एक एकड़ का टुकड़ा एक गांव में हो और एक एकड़ का टुकड़ा दूसरे गांव में हो, एक एकड़ का टुकड़ा तीसरे गांव में हो और एक एकड़ का टुकड़ा चौथे गांव में हो । आप इस तरह से अन्दाजा लगा सकते हैं कि उनकी देखभाल लड़की किस तरह से कर सकेगी । बाज लोग कहते हैं कि क्या हुआ लड़की को मुआवजा मिल जायेगा । बात ठीक है, उस को मुआवजा मिल सकता है और उसको जायदाद का मुआवजा मिलना चाहिये, इसमें मुझे कोई आपत्ति नहीं है, लेकिन वे समझते हैं कि जैसे उनके पास पैसा है, उसी तरह से दूसरों के पास भी होगा, बैंक बैलैन्स होगा और वह आसानी से बहन को पैसा चुका देंगे । बात ऐसी नहीं है । जो पांच एकड़ जमीन के रखने वाले हैं उनके पास आज रुपया नहीं है । अगर उनको बहन को पैसा देना पड़ा तो उनको अपनी जमीनों का बनियों के पास ले जाकर गिरवीं रखना पड़ेगा । इससे तो पार्टिशन (विभाजन) से भी बदतर हालत जमीनों की हो जायेगी ।

मैं यह तो समझता हूं कि बहनों का हक महफूज रहना चाहिये, बहनों को पूरा हक जायदाद में मिलना चाहिये । इस मामले में मैं किसी से भी पीछे नहीं । इस सबको देखते हुए हमको यह मानना पड़ेगा कि श्री कृष्ण चन्द्र का जो संशोधन है १६६ नं० पर उस को स्वीकार कर लेना चाहिये। अगर ऐसा हो जाय तो मुझे कोई आपत्ति की बात नहीं दिखाई देती । बीवी को अपने पति की जायदाद में हिस्सा मिल सके तो उससे उसको आर्थिक आजादी भी मिल सकती है और फैमिली (परिवार) की खराबी भी रुक सकती है ।

लेकिन मैं जानता हूं कि हमारे मंत्री महोदय उसको मानने वाले नहीं हैं । इसलिये मैं मंत्री महोदय के सुझाव को समर्थन करता हूं और मैं समझता हूं कि इससे बहनों को भाइयों से ज्यादा हक मिलने वाला है ।

Shri Tek Chand : I propose to get to grips directly with amendment No. 194. I am lucky in a way, though called late, for the Minister is present as well as his locum-tenens, Shri C. C. Shah.

Shri Pataskar: I have no locum-tenens.

Mr. Deputy-Speaker : Let there be no dispute about that. That is his opinion.

Shri Tek Chand : I am willing to concede that the rigours of clause 6 have to a limited and restricted extent been mitigated by the amendment. But I entertain serious doubts whether the amendment clothes in precise language the intentions stated to be patent.

The amendment consists of three paras. The last para is unnecessary. The second para is inadequate, and the first para is not clear, and the para that is retained is in direct contradiction to the proviso. I am willing to concede that the proviso is intended to be an exception. But the proviso should not be a negation or a virtue contradiction of what is contained as the principle in para. 1. That is what has been done in this clause.

A lip-homage has been paid to the retention of the rule of survivorship or *jus accrescendi* but in the same para. whatever has been accepted or recognised has been taken away.

6 P.M.

In all humility, I do prevail upon the hon. Minister to read with me the analysis of the first paragraph of the proviso. It says :

> "Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship."

There are three inconsistencies, three open contradictions. Firstly, I submit that the interest of the deceased is not specified. What is the interest of the deceased? Is it the whole interest or is it a partial interest? In the absence of any qualifying word, now that the word 'interest' is used, the interpretation will be that it will be the whole interest.

Shri Pataskar: Naturally.

Shri C. C. Shah: That is intended.

Shri Tek Chand: I am glad that my learned friends admits that it naturally means the whole interest. If it is the whole interest of the deceased, then what is left of it? Why this proviso at all? Rather why have paragraph 1 at all? Why not start with the principle of the law? Are you endeavouring to say that the main principle is contained in paragraph 1 and to a limited extent, it is diluted by the proviso? Why do you not then delete paragraph 1 altogether. Let us be clear about it.

Then again you say that the whole interest of the deceased in a Mitakshara coparcenary property shall devolve by testamentary or intestate succession. How can the whole interest in a coparcenary property develove by testamentary succession ? I do not understand it. Here is a coparcenary property that you say retains the character of *jus accrescendi* the character of survivorship. If it contains the character of survivorship, it cannot possibly be subject to testamentary succession. It can go only on intestacy and not otherwise.

Then in explanation No. 1 you have recognised that persons, to whom Hindu law, as modified in Punjab is applicable, are not going to be the sufferers. To that extent, I am satisfied. But the real thing was as contemplated in my amendment No. 193 that it should be permitted, as it is permitted in the rest of the country, to a coparcenary governed by the Mitakshara law, that the son should be in a position to claim partition as he invariably can elsewhere. The hon. Minister was pleased to appreciate the substance contained in this amendment which was similarly worded as the amendment of my hon. friend, Shri Radha Raman. That being so, you are lending countenance, to a very restricted extent, to the principle which I enunciated yesterday which you admitted and recognised and promised to accept.

[Shri Tek Chand]

There was a plentiful attack upon Mitakshara by those who are governed by the Dayabhaga school, or by the matriarchal institution. The only claim they had for attacking the Mitakshara system was their own ignorance of the Mitakashara institution. The Mitakshara institution is one where even the future of a child *en ventre sa mere* is recognised. The future of even a child who is conceived, not yet delivered, is safeguarded by the Mitakshara system. From the date of his conception that child is assured the protection of the joint family system.

An Hon Member: Male child.

Shri Tek Chand: So far as the Dayabhaga institution is concerned, it is intensely selfish. It is open to the father to disinherit his children, male or female. It is not open to the father under a coparcenary system to do so. Therefore, when they spurn and scoff at Mitakshara, pray, in all humility, in justice, let them at least find out its principal features. Let ignorance not be the ground for throwing out a system that has been here for centuries and for the existence of which there is reason, there is justice and there is fairness.

Shri Pataskar: Before I go to put forth before the House my interpretation with regard to the amendment of which I have given notice. I would like briefly to reply to some of the points that have been raised.

I would, first of all, say that I realise that there is an amount of feeling in certain parts of India, where the Mitakshara prevails, in favour of the system. I have no quarrel at this stage with them. Nor, would I like to entertain arguments as to what is going to happen to that system, whether it is good or bad, because I think all that discussion has already taken place. Almost the same points have been raised and I have catalogued them. I do not think, if I do not reply to them, my friends will take me amiss and think that I do not realise or that I do not care for the opinions that they have expressed. But, I have found one good tone in the speeches that have been made in this House, and I would like to take advantage of that and rely on that, and that is that every one has expressed the view that he wants to see that justice is done to women. I am very happy to know that. There is no hon. Member in this House who does not wish justice should be done to women.

Shri Nand Lal Sharma: Do you mean to say that justice is not meted out to them under the Mitakshara?

Shri Pataskar: I hope hon. Member will, instead of showing their feelings, try to appreciate at least what I am going to say. It is not possible to agree; it is impossible. It is not the stage when I would like to quarrel with them on those matters.

What does it come to? As a matter of fact, as I have explained yesterday, my object in having this clause 6, which is the crux of the whole Bill, is that I found in the Hindu Code, as it was then, it was proposed to abolish the joint Hindu family by one stroke. I do not quarrel with some of the members as to whether Mitakshara is good or bad, because it has been in the minds of hon. Members and they have been accustomed to it. That is not the point. I realised that if something was to be done, it should not be done away with by a stroke of the pen. My reason for not doing that is that after all, whether the law is right or wrong, it has governed the people of this country for so long and even if it is to go—and it is going—it should be left to have its own natural course.

An Hon. Member: To die a peaceful death.

Shri Pataskar: I cannot say anything unjust or inconsistent. I thought that so many transactions might have taken place on the basis of that and it would not be proper, in the name of doing justice to women, that something should be done against such transaction. Unfortunately, though I have been saying so, the opponents of this Bill have nothing to say about it. On the other hand, it pained me to find that they charge me with not being logical. I can only say that it flows from their passionate approach to this question.

[MR. SPEAKER *in the Chair*]

I still stand by that. While trying, in this Bill, to give a share to the daughter, as far as possible, I would try not to interfere with society. Why? I say that this is the reason. Therefore, my approach to the question has been not that I would not touch Mitakshara laws. If it is only survivorship, it means there is no succession. No daughter can inherit. As long as you have got the idea of a family being the unit, the daughter

who goes to another family has no place here. Therefore, it is impossible to have survivorship alone. You should do something which might lead to a gradual process of evolution in society by which justice will be done to the women. Clause 6 is intended to do that. Therefore, I say that when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. This is clause 6.

There are hon. Members who say that I should stop there and do nothing more. I do not agree with that. If it is so, why have this Bill at all? What are you going to give to the daughter? Therefore, according to my light, I wanted to proceed in the way which I thought fit. I have said that it is a process of evolution. Supposing there is a joint family following the Mitakshara system existing today, by the passing of this Bill, immediately what happens? Nothing happens to them. I do not think that that family would be disrupted. Supposing, there is no daughter in the family, then also nothing happens. That joint family can continue as it is even after this Bill. But if there is a daughter or such female heirs as mentioned here, then naturally, I have to give her a share. I cannot maintain the Mitakshara principle in the same form in which it exists today. Therefore, some of my lawyer friends say: "Oh, this is something which is inconsistent." It is deliberate. I would like to judge it from the effect which it would produce.

Supposing there is a daughter, what happens? If I want to give her a share what is the best way to do it? Therefore, clause 6 was put in. A great amount of consideration was given to it in the Joint Committee and this was agreeable to a large number of Members of that Committee. Various formulas were put forward. We had to see whether the daughter gets a proper interest or not. When the Joint Committee considered it, there were two explanations. She should have, it was there, an interest not only along with the undivided son but also with the divided son because they thought that that was logical or those who think that the joint family should be dealt with or abolished immediately, there is no difficulty. But we have proceeded on one basis. The sole object was that nothing should be done immediately; there should be sometime for the people to adjust. Therefore, all these provisions were made.

It was found that the explanation No. 2 which was there in the report of the Joint Committee would cause hardship to the son as against the daughter in certain cases. After all, a son has divided and taken away his share. How can we calculate his property? There will be difficulty. The undivided sons will also be put to hardship. It was, therefore, thought in the Rajya Sabha that the explanation should be omitted.

So, it came to the present explanation. At least there should be no difficulty with respect to the undivided son. I have already given that example. With respect to the undivided son, let the daughter get a share equal to that of the undivided son.

But, there was some force in the argument advanced that, when you are not immediately abolishing the Mitakshara system, there would be certain results like these. Supposing there were a father, son and a daughter and the son had not already divided and had a vested interest in the half share, if you are to give the daughter her share in the whole of that including the interest of the man so that she will get half of it, it means that she will get not only the share in the interest of the father but also something out of the undivided son. Then it was argued, and there was some force in it, that this will only lead to division being created on a larger scale. From that point of view the matter was again further discussed here and it was thought that, at any rate, the daughter should get a share in the interest of the father. I would like this to be examined from that point of view.

There are one or two other things also which have been added. For instance, as I have always been saying, there has been a good deal of discussion as to whether an unmarried daughter should get a share, a married daughter should get a share or as to who should get it. We are also constitutionally committed to the principle that we shall not differentiate between the one and the other. Therefore, we thought, though it is an inroad on the original idea of Mitakshara family, the best way of doing it is to give the father the right to make a will. So that has been provided in another clause which is to come

[Shri Pataskar]

up later. If that is not there, the result may be, as I said yesterday, if we give a share to the unmarried daughter then it may be that the married daughter is more in need of it than the unmarried one. It was therefore thought that the father is the best man to judge, with respect to his property, as to who should get what. All this, probably, will happen only when the father dies because, as I have been pointing out, the whole idea is that nothing happens immediately. That point also should be borne in mind.

There have been suggestions made that the daughter also should be considered as a coparcener. I realy find that my friend Pandit K. C. Sharma is very progressive in his outlook. But even now what has happened to the coparcener? How many disputes are there? What complications have arisen; may not be out of the original idea of Mitakshara, but as it is interpreted? Therefore, I do not want to make any further complications. Supposing a daughter is brought in and she becomes a coparcener, then there will be marriage and children and so on. How many coparceners are to be there? I cannot imagine of a family which can go on smoothly by the addition of daughters, their heirs and so on. It strikes at the very basis of this law which was based on the continuation of a family. It is admitted that a daughter does go out of the family by marriage. Therefore, I am sorry, so far as this Bill is concerned, I am unable to agree to this suggestion. I sympathise and I consider the object to be very laudable, but nothing can be done.

There are so many other matters on which Members have spoken. Therefore, I thought that so far as this Bill is concerned, let me see what is the maximum that can be done in respect of a daughter, without trying as much as possible to interfere with the existing state of things and by seeing that equitably something was done whenever it was needed. It is from that point of view that this power to make a will has been given and that was done in the Rajya Sabha.

While we were discussing clause 4 it was pointed out that in the Punjab there is no right to partition on account of some ruling which is there. Naturally I thought, why should there be a distinction between a man governed by Mitakshara in Punjab and a man in some other part. Therefore, the present draft is more or less based after taking into account all the criticisms that have been made, the points that have been raised and consistently with the process, I think it is right that we should try to move in these matters not at break-neck speed, but as far as possible trying to adjust matters and in a process of evolution.

Now I will read and try to explain this clause. I know there is some difficulty which my friend Pandit Thakur Das Bhargava has pointed out and I will refer to it. This clause 6 remains as it is because that is our object. We do not want to interfere, except in certain cases, with the Mitakshara system.

The amendment reads :

> "Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative..."

That is, if it is a daughter or daughter's son who claims through a daughter or some such relative, then what happens is :

> "....the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship."

It is true that the wording as it stood in this proviso at that time was :

> "claims through such female relative, such female or male relative shall be entitled to succeed".

There, the wording was such it only confined itself to the same interests. But, as a result of the comments that were received, we felt that there is an easier and better way.

There is another reason also. If you examine clause 7 also, you will find that it deals with Aliyasantana and other laws and there also the same wording, as is followed here, is included. Now, let us see if that really makes any substantial change from what has been framed already. We thought that the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act

and not by survivorship. There is one point which arises here, if we use this phraseology. Suppose there is a daughter and there is a son also. What happens? The interest of the deceased shall devolve by testamentary or intestate succession, because he may also get something whether by will or by an interest in the property. Supposing there are two sons, and one of them had one-third share. He retains that share. Then he will get the share of the father. He will get something in addition, along with his sister. That will be an addition. Normally, as the law, the property which he acquires from his ancestors—father, etc. —will naturally be a joint family property, so far as he is concerned. But there might be some difficulty on account of the wording in clause 21. I concede that point, because that clause was drafted at a time when the form of clause 6 was a little different. I am prepared to say that this matter will be certainly considered, and I shall try to carry out what I intend at the time when clause 21 comes up. That is really one of the very valuable points and an important contribution which have been made by my hon. friend Pandit Thakur Das Bhargava in his usual manner. He was referring to some Member who was not agreeable to his point. But I never regard him in anyway as to progressive. I know he has been too long here, and I know him too long I know that he has been in the forefront of all progressive legislation. I do not know what others think about him. But if he does not agree with me, I would not say that he is not progressive. That is not my approach to this question. I can assure him so.

Now, explanation 1 says thus :

> "For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not".

This was in the original Bill and it formed part of the first proviso. It had to be separated, because we wanted to provide that there should be no hardship so far as the Punjab people were concerned. I am glad that so eminent a lawyer and a close student of such bills as my friend Pandit Thakur Das Bhargava has brought forward this suggestion. It is good that he has remembered the point. It is a better approach to this question than the one which was brought to bear on the former draft.

Then there is explanation 2. What does it say? It says :

> "Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased to claim on intestacy a share in the interest referred to therein."

Suppose there are two sons and a daughter. There is a son who has already separated and has taken the full interests. We do not want to affect his rights. That may be open to argument. Should it be left so as to be open to argument? I know it was capable of being argued. So, it was thought better to put in such an explanation. Naturally, when a man has separated and got his full share, why should he again come forward and share it with the undivided brother or sister? It was not with that point of view. It was only as a matter of abundant precaution, in order that there might be no chance of any such thing happening in future, that this was really introduced here.

There is one lacuna here also which I have just noticed. Explanation 2 reads:

> "Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased to claim on intestacy a share in the interest referred to therein."

It may be that in certain cases, a son may separate and he may die after that. That possibility is there. Therefore, in order to avoid that risk, with your permission I will make a drafting amendment. I will redraft Explanation 2 as follows :

> "Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs...." etc.

I have added the words " or any of his heirs" after the words "death of the deceased", because it may happen that a separated son is dead and he may have some heirs. This would mean that any of his heirs also will have no share.

[Shri Pataskar]

There was a charge, so far as the former draft was concerned, that in order to deprive the daughter of her legitimate share, they will try to separate all the sons, even the infants, in the family. Now, there will be some incentive to remain joint and not separate, because even if he separates, he is not going to get anything when the father dies. So I am sure that this provision will lead more to the preservation of the joint family. Of course, even the existing provision was not put in deliberately so that the sons might separate in order to deprive the daughter of her share. Anyhow, without departing in any way from the principles underlying the drafting of clause 6, without sacrificing the idea with which that provision was made, after a good deal of discussion and after hearing the views of all hon. Members in this House, I have drafted this amendment. I hope all hon. Members will find it acceptable.

Of course, I am aware that there are some who do not want any interference with the Mitakshara law; but that cannot be helped. As far as clause 6 is concerned, I hope that, with the explanation which I have given and the way in which I have tried my best to explain the necessity for and the reasons behind the change in the wording of clause 6, I have satisfied all my hon. friends, including Mr. V. G. Deshpande. He may disagree with me on the other things; but I hope, as far as clause 6 is concerned, there will be general agreement that the amendment I have brought forward is better.

Shri V. G. Deshpande: May I know whether automatically after the death of the father the joint status of the sons would be severed?

Shri Pataskar: No, it will not be. My hon. friend, Pandit Thakur Das Bhargava, also pointed out that clause 21 might lead to such a conclusion. We will have to consider that clause from that point of view also, because that is not our object. Unfortunately, I know that there have been different opinions in this House regarding this matter. Some do not want Mitakshara family to be touched at all. There are those who want that it may be entirely scrapped away. There are those who are afraid if the daughter should be made a coparcenary. There are those who say that a married or unmarried daughter should or should not be given a share. All sorts of opinions are there. Probably, the discussion of this clause assumed to be more or less discussion of the whole of the contents of this Bill. I have tabulated—I do not want to take the time of the House on that —the same objections about clauses 22, 23, etc. I do not want to take the time of the House while considering this clause in making a reply to them. If I do not make any reply, I request hon. Members not to misunderstand me that I am reluctant to reply. It is not possible. I hope that this amendment No. 201 which I have moved after great deliberation, not only after considering the points of view of a particular section, but after taking into consideration all the comments that were made in this House and the differing views that were expressed, consistently with what I had said yesterday when we were discussing clause 4, will be acceptable to the hon. Members so far as the scheme of things contained in this Bill is concerned.

Shri Kasliwal: I want a clarification. The words 'or any of his heirs' have come so suddenly upon us. We do not know what the meaning is.

Shri Pataskar: I have already explained. What would be done is this. A separated son shall not again claim a share. It may be that the separated son is dead and his heirs are there. He who has already taken a share or his heirs should not come in again. That is the idea.

Mr. Speaker: I shall first take up the amendment of the Government and the amendments to that amendment. Does Pandit Thakur Das Bhargava press his amendment?

Pandit Thakur Das Bhargava: In view of what fell from the hon. Minister, I do not think it is necessary to put it to the vote. There is no difference in substance.

Mr. Speaker: What about the amendments of Shri C. C. Shah, and Shri Venkataraman?

Shri C. C. Shah: There are two amendments, 162 and 194, Amendment No. 194 is the same as 201. If amendment No. 201 is put, the other need not be put. We do not press amendment 162.

Mr. Speaker: Let me take up amendment No. 201 as amended.

Shri K. K. Basu: By whom?

Shri Pataskar: That was a verbal change suggested by me.

Mr. Speaker: In the Explanation 2 this has been made clear that a member of the coparcenary who has already separated himself and taken his share shall not be entitled in intestacy to succeed. That may mean his son or grandson may succeed if he is dead, and the son or grandson may take his share. To make the position clear, he has himself suggested this amendment that they shall not come in. Who knows? He has suggested the addition of the words "or any of his heirs' after the word 'deceased' in the last but one line.

The question is :

In the Explanation 2 of the proposed amendment No. 201, in the last but one line, after the word "deceased" *add* "or any of his heirs'

The motion was adopted.

Mr. Speaker: Now amendment No. 201 with this amendment.

The question is :

Page 4—

for lines 25 to 36, *substitute*—

"Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1. For the purpose of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2. Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

The motion was adopted.

Mr. Speaker: So amendment 194 need not be put. Any other amendment?

Shri V. G. Deshpande: No. 163.

Mr. Speaker: I would like to be advised by the hon. Minister if this amendment No. 163 (which is the same as No. 66) is or is not barred.

Shri C. C. Shah: Amendment No. 163 is barred because it seeks to omit the Explanation to clause 6 which is already omitted by the Explanation to amendment No. 201 which has been accepted by the House.

Mr. Speaker: Amendment No. 163 wants to omit lines 25 to 36. Amendment No. 201 has been carried. Therefore, his object has been achieved. The object of the Government has also been achieved. It is barred. So, I will put the other amendments.

Page 4—

for Clause 6, *substitute*—

"6. (1) On and after the commencement of this Act no right to claim any interest in any property of an ancestor during his life time which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court.

Explanation.—In this section property includes both movable and immovable property whether ancestral or not or whether acquired jointly with other members of the family or by way of acquisition to any anscestral property or in any other manner whatsoever.

(2) On and after the commencement of this Act no court shall recognise any right to or interest in any joint family property based on the rule of survivorship; and all persons holding any joint family property on the day this Act comes into force shall be deemed to hold it as tenant-in-common, as if a partition has taken place between all the members of the joint family as respects such property on the date of the commencement of this Act, and as if each one of them is holding his or her own share

separately as full owner thereof;

Provided that nothing in this section shall affect the right to maintenance and residence if any, of the members of the joint family, other than the persons who have become entitled to hold their shares separately and any such right can be enforced as if this Act has not been passed :

Provided further that nothing in this section shall affect the rights of a child in the womb on the date of the commencement of this Act and born alive subsequently.

(3) (a) On and after the commencement of this Act no court shall, save as provided in clause (b), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather, great-grandfather, or any alienation of property in respect of, or in satisfaction of any such debt on the ground of pious obligation of the son, grandson or great-grandson to discharge any such debt.

(b) In case of any debt contracted before the commencement of this Act nothing contained in clause (a) shall affect—

(i) the rights of any creditor to proceed against son, grandson or great-grandson as the case may be, or

(ii) any alienation made in respect of or in satisfaction of any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case had this Act not been passed.

Explanation.—For the purpose of clause (b), the expression 'son grandson, or great-grandson' shall be deemed to refer to the son, grandson or great-grandson as the case may be who was born or adopted prior to the commencement of this Act or was in the womb at the commencement of this Act and born alive subsequently.

(4) Where a debt has been contracted before the commencement of this Act by the manager or karta of a joint family for family purposes nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt and any such liability may be enforced against all or any of the persons liable therefore, in the same manner and to the same extent as would have been the case if this Act had not been passed."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

for clause 6, *substitute* :

"6. (1) No Hindu shall alter the commencement of this Act acquire any right to or interest in—

(a) any property of an ancestor during his life-time merely by reason of the fact that he is born in the family of the ancestor; or

(b) any joint family property which is founded on the rule of survivorship.

(2) All persons holding, on the commencement of this Act, any property jointly as members of joint family shall be deemed to hold the property as tenants-in-common as if partition had taken place on such commencement and as if each one of them is holding his or her share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately and any such right can be enforced as if this Act had not been passed."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

for lines 25 to 36, *substitute* :

"(2) Any custom or usage to the effect that any coparcener in a Mitakshara governed family shall not be entitled to demand partition in the life time of any other coparcener, shall cease to have effect."

The motion was negatived.

Mr. Speaker : The question is :

Omit lines 32 to 36.

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

for lines 32 to 36 *substitute*:

"*Explanation.*—For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include—

(a) the interest of every one of his undivided male descendants in the coparcenary property, and

(b) the interest allotted to any male descendant who may have taken his share for separate enjoyment on a partition made after the commencement of this Act and before the death of the deceased, the partition nothwithstanding;

and the female relative shall be entitled to have her share in the coparcenary property and allotted to her accordingly."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

after line 36 *add* :

"Provided that if any adult male descendant has made any material contribution to the acquisition of the coparcenary property such contribution shall not be taken into consideration in computing the share of the female relative in the coparcenary property."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

line 31—

(i) *add* at the end—

"The interest of the deceased in the coparcenary property shall not include the interests of any son or grandson who notwithstanding any custom to the contrary shall be deemed to be entitled to claim partition against the father or grandfather in respect of coparcenary property".

(ii) *omit* lines 32 to 36.

The motion was negatived.

Mr. Speaker : The question is:

Page 4, line 31—

(i) *add* at the end

"For clearance of any doubt it is hereby declared that the son or grandson in any undivided Hindu family governed by Mitakshara shall be deemed to be entitled to claim partition of the coparcenary property against his father or grandfather notwithstanding any custom to the contrary."

(ii) *omit* lines 32 to 36.

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

for clause 6, *substitute* :

"6. On and after the commencement of this Act and notwithstanding anything contained in any provisions of the law or custom, wife, son's wife, widow of a predeceased son and unmarried daughter shall also be members of the Mitakshara coparcenary."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

(i) lines 26 and 27 :

omit "or a male relative specified in that class who claims through such female relative" ;

(ii) line 28,—

omit "or male"; and

(iii) line 29,—

omit "or he".

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

for lines 25 to 36, *substitute* :

"Provided that a daughter and her children will be deemed to be members of the Hindu coparcenary in the same way, as a son or his children."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

(i) line 31, *add* at the end :

"and the rules of succession of Mitakshara law or survivorship shall not apply to such heirs"; and

(ii) *for* lines 32 to 36, *substitute* :

"*Explanation.*—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death on a claim being made by him, irrespective of whether he was entitled to claim partition or not."

The motion was negatived.

Mr. Speaker : The question is :

"That clause 6, as amended stand part of the Bill."

The motion was negatived.

Clause 6, as amended, was added to the Bill.

Mr. Speaker : Clause 4 still remains. There are some amendments to clause 4. I will put them to the vote of the House.

Mr. Speaker : The question is:

Page 3,—

lines 36 and 37:

omit "any custom or usage as"

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

omit lines 1 to 3.

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

after line 3 *add* :

"(c) any law and customs or usage in force immediately before the commencement of this Act, bearing the right to partition of the Mitakshara coparcenary property by any member of the coparcenary owning the property, shall cease to have effect."

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

omit lines 4 to 8.

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

line 5 :

after "affect" *insert* :

"the right to succeed to immovable property as has been in force hitherto amongst Hindus, Jains, Sikhs and Buddhists and persons other than Muslims, Christians, Parsis and Jews and"

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

line 6 :

after "being in force" *insert*—"or to be enacted hereafter".

The motion was negatived.

Mr. Speaker : The question is:

Page 4—

after line 3 *add* :

"(c) any law, customs or usage barring the right of any male member of a joint Hindu family governed by Mitakashara Hindu Law to claim partition of the coparcenary property, in force immediate by before the commencement of this Act, shall cease to have effect."

The motion was negatived.

Mr. Speaker : The question is:

Page 3—

after line 39 *add* :

"(a) in the case of every Hindu undivided family governed by the Mitakshara Law a son or a grandson shall be deemed to be entitled to claim partition of the coparcenary property against his father or grandfather notwithstanding any customs to the contrary."

The motion was negatived.

Mr. Speaker : The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the, Bill.

6-37 P.M.

The Lok Sabha then adjourned till Half Past Ten of the Clock on Friday, the 4th May, 1956.