

4th February 1937

**THE  
LEGISLATIVE ASSEMBLY DEBATES**

**(Official Report)**

---

**Volume I, 1937**

*(25th January to 19th February, 1937)*

---

**FIFTH SESSION  
OF THE  
FIFTH LEGISLATIVE ASSEMBLY,  
1937**



**PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, SIMLA.  
1937**

**M89LAD**

# Legislative Assembly.

## *President :*

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

## *Deputy President :*

MR. AKHIL CHANDRA DATTA, M.L.A.

## *Panel of Chairmen :*

SIR MUHAMMAD YAKUB, KT., M.L.A.

MR. S. SATYAMURTI, M.L.A.

SIR LESLIE HUDSON, KT., M.L.A.

SIR COWASJI JEHangIR, BART., K.C.I.E., O.B.E., M.L.A.

## *Secretary :*

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

## *Assistant of the Secretary :*

RAI BAHADUR D. DUTT.

## *Marshal :*

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

## *Committee on Petitions :*

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

SARDAR SANT SINGH, M.L.A.

MR. M. GHILASUDDIN, M.L.A.

MR. MATHURADAS VISSANJI, M.L.A.

# CONTENTS.

VOLUME I.—25th January to 19th February, 1937.

	PAGES.		PAGES.
<b>MONDAY, 25TH JANUARY, 1937,—</b>		<b>MONDAY, 25TH JANUARY, 1937,—<i>contd.</i></b>	
Members Sworn . . . . .	1	The Land Customs (Amendment) Bill—Introduced . . . . .	184
Questions and Answers . . . . .	2—117	The Code of Civil Procedure (Second Amendment) Bill (Insertion of new section 44-A)—Recommitted to Select Committee . . . . .	184—85
Unstarred Questions and Answers . . . . .	117—25	The Arbitration (Protocol and Convention) Bill—Referred to Select Committee . . . . .	185
Statements laid on the Table . . . . .	125—57	The Indian Lac Cess (Second Amendment) Bill—Passed . . . . .	185—86
Deaths of Maulvi Badi-uz-Zaman and U Ba Si . . . . .	157—58	The Hindu Women's Rights to Property Bill—Presentation of the Report of the Select Committee . . . . .	186
Motion for Adjournment <i>re</i> Official interference in elections at Moradabad—Ruled out of order . . . . .	158—59		
Report of the Government Delegates at the twentieth session of the International Labour Conference, laid on the table . . . . .	159—81	<b>TUESDAY, 26TH JANUARY, 1937,—</b>	
Panel of chairmen . . . . .	182	Questions and Answers . . . . .	187—226
The Durgah Khawaja Saheb Bill . . . . .	182	Unstarred Questions and Answers . . . . .	226—31
Loyal congratulations to His Majesty King George VI, Emperor of India, upon His accession and an assurance of devotion to His Royal Person . . . . .	182	The Insurance Bill—Introduced . . . . .	232
Motion <i>re</i> Election of the Standing Committee for the Department of Commerce—Adopted . . . . .	182—83	Resolution <i>re</i> —	
The Repealing and Amending Bill—Withdrawn . . . . .	183	Draft Convention of the International Labour Conference <i>re</i> maintenance of rights under invalidity, old-age and widows' and orphans' Insurance—Adopted . . . . .	232—33
The Indian Boilers (Amendment) Bill—Introduced . . . . .	183	Draft Convention of the International Labour Conference <i>re</i> annual holidays with pay—Adopted . . . . .	233—49
The Indian Electricity (Amendment) Bill—Introduced . . . . .	183		

	PAGES.
<b>WEDNESDAY, 27TH JANUARY, 1937,—</b>	
Statements laid on the table . . . . .	251—52
Demands for Supplementary Grants . . . . .	252—64
<b>THURSDAY, 28TH JANUARY, 1937,—</b>	
Short Notice Question and Answer . . . . .	265—68
The Arya Marriage Validation Bill—Postponed . . . . .	268—70
The Hindu Marriage Validity Bill—Discussion on the motion to refer to Select Committee not concluded . . . . .	270—320
<b>FRIDAY, 29TH JANUARY, 1937,—</b>	
Short Notice Question and Answer . . . . .	321
Governor General's assent to Bills . . . . .	321—22
The Code of Civil Procedure (Second Amendment) Bill—Presentation of the report of the Select Committee . . . . .	322
The Arbitration (Protocol and Convention) Bill—Presentation of the report of the Select Committee . . . . .	322
Resolution <i>re</i> interference from Public Servants in the ensuing Elections—Adopted, as amended . . . . .	322—23
Statement of Business . . . . .	323—25
<b>MONDAY, 1ST FEBRUARY, 1937,—</b>	
Member Sworn . . . . .	327
Message from H. E. The Governor General . . . . .	327
Questions and Answers . . . . .	327—37
Statements laid on the Table . . . . .	337—38
Election of the Standing Committee for the Department of Education, Health and Lands . . . . .	338—40

	PAGES.
<b>MONDAY, 1st FEBRUARY, 1937,—<i>contd.</i></b>	
The Contempt of Courts (Amendment) Bill—Introduced . . . . .	340
The Indian Income-tax (Amendment) Bill—Introduced . . . . .	340
Amendment of Indian Legislative Rules—Referred to a Committee . . . . .	341—87
The Land Customs (Amendment) Bill—Passed . . . . .	387—92
The Indian Boilers (Amendment) Bill—Referred to Select Committee . . . . .	392—94
The Indian Electricity (Amendment) Bill—Referred to Select Committee . . . . .	394—96
<b>TUESDAY, 2ND FEBRUARY, 1937,—</b>	
Members Sworn . . . . .	397
Questions and Answers . . . . .	397—402
The Insurance Bill—Referred to Select Committee . . . . .	402—16
The Indian Railways (Amendment) Bill—Referred to Select Committee . . . . .	416—28
<b>WEDNESDAY, 3RD FEBRUARY, 1937,—</b>	
Questions and Answers . . . . .	429—39
Demands for Supplementary Grants in respect of Railways . . . . .	437—66
<b>THURSDAY, 4TH FEBRUARY, 1937,—</b>	
Members Sworn . . . . .	467
Amendment of Indian Legislative Rules—Presentation of the Report of the Assembly Committee . . . . .	467
The Hindu Marriage Validity Bill—Motion to refer to Select Committee, negatived . . . . .	467—85

	PAGES.
<b>THURSDAY, 4TH FEBRUARY, 1937,—<i>contd.</i></b>	
The Hindu Women's Rights to Property Bill—Passed . . . . .	485—515
The Code of Criminal Procedure (Amendment) Bill (Amendment of sections 30, 34, 34A and 35)—Discussion on the motion to refer to Select Committee not concluded . . . . .	515—20
Appendix "A" . . . . .	521—28
<b>FRIDAY, 5TH FEBRUARY, 1937,—</b>	
Questions and Answers . . . . .	529—33
Statements laid on the table . . . . .	533—46
Message from H. E. the Governor General . . . . .	547
Statement of Business . . . . .	547—48
<b>MONDAY, 8TH FEBRUARY, 1937,—</b>	
Member Sworn . . . . .	549
Questions and Answers . . . . .	549—50
The Indian Naval Armament (Amendment) Bill—Introduced . . . . .	550
Amendment of the Indian Legislative rules . . . . .	551—607
<b>TUESDAY, 9TH FEBRUARY, 1937,—</b>	
Members Sworn . . . . .	609
Questions and Answers . . . . .	609—12
The Indian Boilers (Amendment) Bill—Presentation of the Report of the Select Committee . . . . .	612
The Indian Electricity (Amendment) Bill—Presentation of the Report of the Select Committee . . . . .	612
Amendment of the Indian Legislative Rules . . . . .	612—16
The Indian Income-tax (Amendment) Bill—Passed as Amended . . . . .	617—38
The Contempt of Courts (Amendment) Bill—Passed . . . . .	638—41

	PAGES.
<b>TUESDAY, 9TH FEBRUARY, 1937,—<i>contd.</i></b>	
The Code of Civil Procedure (Second Amendment) Bill—Insertion of new section 44A—Passed as amended . . . . .	641—47
The Arbitration (Protocol and Convention) Bill—Passed . . . . .	647—60
The Code of Civil Procedure (Third Amendment) Bill—Amendment of section 60—Passed as amended . . . . .	650—58
<b>WEDNESDAY, 10TH FEBRUARY, 1937,—</b>	
Member Sworn . . . . .	659
Message from H. E. the Governor General . . . . .	659
Election of Members to the Standing Committee on Emigration . . . . .	659—60
The Repealing and Amending Bill—Introduced . . . . .	660
The Workmen's Compensation (Amendment) Bill—Introduced . . . . .	660
Resolution re creation of a separate Road Fund for the purposes of Road Development—Adopted as amended . . . . .	660—714
The Manœuvres Field Firing and Artillery Practice Bill—Referred to Select Committee . . . . .	714—15
<b>THURSDAY, 11TH FEBRUARY, 1937,—</b>	
The Code of Criminal Procedure (Amendment) Bill (Amendment of sections 30, 34, 34A and 35)—Motion to refer to Select Committee, negatived . . . . .	717—56
The Indian Arms (Amendment) Bill—Discussion on the motion to refer to Select Committee [not concluded . . . . .	757—66

	PAGES.
<b>FRIDAY, 12TH FEBRUARY, 1937,—</b>	
Questions and Answers . . . . .	767—72
Statements laid on the Table . . . . .	772—74
Message from H. E. the Governor General . . . . .	774
Statement of Business . . . . .	774—75
Resolution re Revision of Pension Rules for Inferior Services—Withdrawn . . . . .	775—87
<b>TUESDAY, 16TH FEBRUARY, 1937,—</b>	
Member Sworn . . . . .	789
Questions and Answers . . . . .	789—801
Unstarred Questions and Answers . . . . .	801—03
Message from H. E. the Governor General . . . . .	803
Presentation of the Railway Budget for 1937-38 . . . . .	804—12
Committee on Petitions . . . . .	812—13
Election of the Standing Committee for the Department of Industries and Labour . . . . .	813—14
The Agricultural Produce (Grading and Marking) Bill—Introduced . . . . .	814
<b>THURSDAY, 18TH FEBRUARY, 1937,—</b>	
Statements laid on the Table . . . . .	815—16
The Railway Budget—General Discussion . . . . .	816—78

	PAGES.
<b>FRIDAY, 19TH FEBRUARY, 1937,—</b>	
Questions and Answers . . . . .	879—88
Unstarred Questions and Answers . . . . .	886—91
Notification referred to in the Resolution re Emigration to Burma . . . . .	891
Statement of Business . . . . .	891
The Indian Limitation (Amendment) Bill—Introduced . . . . .	891
The Indian Tea Cess (Amendment) Bill—Introduced . . . . .	891—92
The Indian Army (Amendment) Bill—Introduced . . . . .	892
The Agricultural Produce (Grading and Marking) Bill—Passed as amended . . . . .	892—97
The Indian Boilers (Amendment) Bill—Passed as amended . . . . .	898—99
The Indian Electricity (Amendment) Bill—Passed as amended . . . . .	899—900
The Indian Naval Armament (Amendment) Bill—Passed . . . . .	900—02
The Workmen's Compensation (Amendment) Bill—Passed . . . . .	902—03
Resolution re Emigration to Burma—Adopted . . . . .	903—04

# LEGISLATIVE ASSEMBLY.

Thursday, 4th February, 1937.

---

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

---

## MEMBERS SWORN.

Mr. Mead Slade, M.L.A. (Government of India: Nominated Official); and

Mr. Joseph Ernest Parkinson, M.L.A. (Government of India: Nominated Official).

---

## AMENDMENT OF INDIAN LEGISLATIVE RULES.

### PRESENTATION OF THE REPORT OF THE ASSEMBLY COMMITTEE.

**The Honourable Sir Nripendra Sircar** (Leader of the House): Sir, I present the Report\* of the Committee on the proposed amendments of Rule 8 of the Indian Legislative Rules:

---

## THE HINDU MARRIAGE VALIDITY BILL.

**Dr. Bhagavan Das** (Cities of the United Provinces: Non-Muhammadian Urban): Sir, the immortal Omar Khayyam has sung to the effect that:

"A book of poems, and a bowl of wine,  
And one true friend even in a wilderness—  
And wilderness were company enow."

If, Sir, I were ten years younger like the Leader of the House, I would be able, in humble imitation of Omar Khayyam, to sing:

"These bulky volumes and this coffee flask,  
Are all I ask to carry on my task,  
And keep the House engaged till the day ends,  
And dewy eve to respite my Bill sends."

But, unfortunately, I am no longer so young as my highly respected reformist, and, at the same time, Sanatanist friend, the Honourable the Law Member.

---

\*Vide Appendix "A" at the end of the debates for the day.

**The Honourable Sir Nripendra Sircar** (Law Member): I am very old.

**Dr. Bhagavan Das:** But you are ten years younger than I am. If I were 25 or 26 years younger, and had the youthful exuberance of my very good-hearted and sincerely religious minded, but I am afraid very short-sighted, friend, Mr. Bajoria, I would then talk not only the whole of this day, but take the whole of the next non-official day also within my purview, and say, like the hero of Sir Walter Scott's poem, even on the 11th:

"Come one, come all! This House shall fly  
From its soft seats sooner than I!"

But, Sir, I am afraid I cannot trust either my brains or my lungs to enable me to say these things with any confidence.

**Sir Abdul Halim Ghuznavi** (Dacca cum Mymensingh: Muhammadan Rural): But the Honourable Member occupied the whole of the last non-official day.

**Dr. Bhagavan Das:** It was your unexpected help and unexpected opposition that enabled me to entertain the House till the end of the day's sitting. I may not have a chance of doing that today.

**Mr. Lalchand Navalrai** (Sind: Non-Muhammadan Rural): Was the opposition also unexpected?

**Dr. Bhagavan Das:** To a certain extent, yes.

I feel I should mention at this stage that a suggestion was made to me that the further discussion of my Bill should be postponed as the Arya Samaj Marriage Validation Bill was postponed.

**Babu Baijnath Bajoria** (Marwari Association: Indian Commerce): Who made the suggestion?

**Dr. Bhagavan Das:** That is not necessary to say. I passed on the suggestion to the proper quarters, but I was given to understand that Government were not willing, and my good brother, Babu Baijnath Bajoria, was not willing either; and I was also given to understand that the conventions and the Standing Orders of this House require that there must be unanimous agreement, among all the Members, before such a postponement could be granted. Therefore, I was left without option to plough my lonely furrow through the serried ranks of the Government benches. I should have been happy to accommodate the Movers of all the Bills that follow mine on the order paper of the day. Some of them are ripe for further consideration, others are ready to be referred to Select Committees without much difficulty,—they are not so contentious as my Bill,—and many others have simply to be sent into circulation. I feel some compunction in taking up the whole of this day, because that will cause very great disappointment to those other friends who have all these private social Bills on the anvil, and it may even bring me their ill-will. But I am afraid duty compels me to incur all these risks.



I shall try first to confound the Government out of the mouth of the Government itself, and then I shall deal with my Sanatanist opponents. These two are the main heads under which the opposition to my Bill may be classified, i.e., Government and Sanatanist, and, among the latter, I have the agreeable as well as disagreeable surprise of having to place such good friends as Mr. Umar Aly Shah and Sir Muhammad Yamin Khan, side by side with Mr. Bajoria. If, after having quoted his precessors against himself,—incidentally, I prefer the word “precessors” to the word “predecessors”; I think the word “predecessors” is often used very wrongly: we do not say “sudecessor” but successors; and, similarly, we ought to say “precessors”: “predecessors” would be correct only if we were to say that Alexander predeceased Napoleon and so was his predecessor, both being deceased now . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member wants to take up the time of the House in this way, so that he may take the whole day, the Chair would point out that this is not relevant. The Honourable Member ought to confine himself to the provisions of the Bill.

**Dr. Bhagavan Das:** I stand corrected. It was not deliberate intention, to take up more time than I should, that led me into stating the distinction between ‘pre-de-cessor’ and ‘pre-cessor’ but a wish to proceed to the more correct use of the English language, which we use in this House; and the wish was the result of a sub-conscious pedantic habit which life-long professional and literary work has developed in me, and for which I begged the kind indulgence and forgiveness of the House at the very outset of my first speech on the 28th ultimo. I will try to be more strictly relevant, Sir. Very well, then I try to quote the Law Member’s precessors in office against himself, first; and if, after having considered their views, he thinks it fit to reconsider his own, and helps me to let this Bill go to the Select Committee, then I shall be deeply grateful, and that will save the time of the House completely for every one concerned. I find that when a Bill in precisely these words was brought forward by the Honourable Mr. Patel, and was discussed in the pre-reform Council, on the 25th February, 1920, the Honourable Sir William Vincent, in moving an amendment to the motion made by Mr. Patel, that the Bill should be referred to a Select Committee made up of officials as well as non-officials said as follows: “I should like,.....”

**The Honourable Sir Nripendra Sircar:** If my friend will allow me to point out, that was in 1920. After that, in 1928, we had the Special Act, and my point is that this Bill is wholly unnecessary.

**Dr. Bhagavan Das:** I will deal with that point. Sir William Vincent moved his amendment (to the motion placed by Mr. Patel before the Council), that the Bill be referred to a Select Committee consisting of the Honourable Sir George Lowndes as *ex-officio* Chairman, and the non-official Members only. He said:

“In moving this amendment I should like to explain the position of the Government in regard to this measure. The Government of India regard the Bill as a *liberal* measure with which individual Members of the Government have every sympathy. It is a *permissive* measure as I understand it. In no sense is it *obligatory* upon any

[Dr. Bhagavan Das.]

person. My own experience is that *the best educated Indian opinion* I have met, at any rate in the province with which I am familiar, is *strongly in favour* of the proposals. Many of us indeed feel that it is *unreasonable* that adult persons who desire to marry should be *prohibited* by law from doing so because they happen to belong to different castes. *Nor am I myself much impressed with the argument that this law will strike a blow at the foundations of the Hindu religion.*"

This last is the argument that has been advanced very persistently by my friend, Babu Baijnath Bajoria, on the 28th ultimo. Sir William Vincent goes on:

"This argument has been used too often. It was advanced when *Sati* was prohibited, at the time of the Widow Remarriage Act, when the Civil Disabilities Act was enacted, and later on when the Age of Consent Act was passed. We are many of us unwilling to believe that *the Hindu religion* does not rest on some *more solid basis* than that. I am told also that in some Indian States there is legislation comparable to the Bill before the Council."

This was in 1920. As I mentioned to the House, the other day, *i.e.*, on the 28th ultimo, the State of Baroda has passed a number of Acts which are much more radical than the modest Bill which I have brought before the House. I have no definite information as to other States. Then he says:

"I have now placed before the Council the views of the Government on the Bill. There is naturally a feeling of sympathy with this measure, but in view of the opposition from the orthodox community, we seek to obtain the views of non-official Members of this Council as to our wisest course, and for this reason. I have moved the amendment now before the Council. We shall largely be guided by the opinion of the *non-official Members* who represent largely the *educated opinion* of the country. It is for that reason and in order to secure an effectual presentment of that opinion that I have proposed that this Bill should be referred to a Select Committee consisting of the Honourable Sir George Lowndes, who as Honourable Members know, is bound under the rules to be Chairman of every Select Committee, and of non-officials. Otherwise, indeed, it is very difficult for Government to ascertain the views of individual members. I must, however, say that while I propose this course, we retain liberty of action, if we think necessary owing to circumstances, either to defer the further consideration of this measure until the *enlarged Legislative Councils* come into being"—(and they have now come into being, so that in any case the re-representation of such a Bill to the enlarged Legislative Councils was already contemplated by Sir William Vincent)—"or to republish it or to take any other line that may appear to us to be most proper in the whole circumstances. I should be glad if this motion is carried, and I may say that it will be carried, because I shall use the official majority, and I have reason to believe also that my Honourable friend, Mr. Patel, will not oppose it."

Sir, this is all that I am asking for now. As Sir George Lowndes would have been and was the official chairman of the Select Committee, then appointed, so the present Law Member and Leader of the House will be the official chairman of the Select Committee that I am pleading for; and we all know how much power there always is in the hands of the chairman or president. He continued:

"Finally, I wish to make it clear that, while the Government are referring this matter entirely to the non-official committee, they quite realise that the responsibility for the ultimate decision will rest with them. So long as the present form of Government remains, it would be idle for Government to attempt to get rid of responsibility in this matter. But what we seek in this matter is the advice and help of all the non-official Members of this Council on a question of very great difficulty, the difficulties, the intricacies, and the perplexities of which we as foreigners possibly cannot understand as fully as many members of this Council."

When the discussion was continued on the 26th of February, 1920, speaking, again, Sir William Vincent said:

"I turn now to the speech of my friend Mr. Sarma, and I must confess to being much impressed by many of the arguments that he put forward. He has supported the Bill, but at the same time he put forward practical difficulties which must have appealed to every Member of this Council, to minimise which would be idle. He referred, for instance, to the difficulties about inheritance, adoption, and legitimacy. Then we had the question, raised by my friend Mr. Sastri, as to the necessity of registration and confining this law to monogamous marriages, and he also raised the question whether such marriages should only be permissible to those who have attained majority. And while I am speaking of monogamous marriages I am quite sure that the Honourable Mr. Patel does not endorse the suggestion made by Mr. Chanda on this matter. Mr. Chanda apparently had in his mind, not a system of polygamy, but of polyandry, for if I understand him correctly, he referred to the suggestion that no man or woman should be allowed to marry outside his caste, if he or she has a wife or husband alive. This was, I think, a mistake of the Honourable Member . . . ."

**Dr. Ziauddin Ahmad** (United Provinces: Southern Divisions: Muhammadan Rural): On a point of order. Sir. The quorum is not present.

[Under instructions from the Honourable the President (the Honourable Sir Abdur Rahim) the bell was rung, and the requisite number of Honourable Members soon entered the Chamber and took their seats.]

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member can now go on with his speech.

**Dr. Bhagavan Das:** Sir William Vincent went on to say:

"All these are, however, matters of detail which will have to be considered by the Select Committee, and if the Committee think it necessary to alter the Bill very much in these respects, the question of re-publication and inviting public opinion on the new provisions will have to be considered, as was suggested by the Honourable Rai Sita Nath Roy Bahadur. Many of the questions involved are of great intricacy and complexity. We are, speaking as a Government, in no way anxious to press a measure of this kind on an unwilling people. We are also well aware of the force of the remarks made by Raja Sir Rampal Singh that, whatever people may say or do now, in the end it will be the Government which will be responsible for the measure. If there is any odium excited, Government will have to bear it, and Honourable Members who support the Bill in the Council will escape the responsibility which must attach to Government in such a matter. *What we want* at first is to get the Bill referred to a *Select Committee* where it will, I hope, be examined with the greatest care. If the Committee think it ought to be re-published, then we are prepared to re-publish it. If they think that material additions are necessary to provide for the difficult questions raised by my friend Mr. Sarma, then we shall pay the greatest attention to the wishes of the Select Committee, but I hope for the present that the Honourable Member will accept the amendment I have placed before the Council."

Sir, I echo the hope of Sir William Vincent as regards the substantive motion I have made. You will notice that difficulties about inheritance, adoption, legitimacy, etc., are contemplated in Sir William Vincent's speech, and he expressly says that these could be solved in the Select Committee. That is all that I want, Sir.

The Honourable the Leader of the House said that Gour's Act deals with all those things, and makes it unnecessary now to go over the same ground. I respectfully submit that the net effect of Gour's Act is that it does not help the Hindu community at all. It adds to its fissiparousness. It only creates a new small sub-caste of what we may call Gourians or Indian-Succession-Actists; or some other such name may be given to them.

[Dr. Bhagavan Das.]

They will become like another Brahma Samaj, without any solidarising, articulating, liberalising, uplifting influence on the Hindu masses, vivisected and microtomised as they are today into three thousand mutually untouchable, exclusive, repellant castes and sub-castes. That is not what the Hindu community needs today. It needs the shifting back of the caste system, from the wrong basis, the very wrong and very false basis, to which it has now become perverted, of crass and sheer heredity alone, to its real original, true basis of vocation. What is called the caste system needs to become again what it was in ancient times, a vocation-class-system. Such measures as Gour's Act—I do not want to be impolite, Sir, but there is no help for me but to say—are retrograde and mischievous, and not my Bill, which was characterised in these terms by my highly respected friend, the Honourable the Law Member. Gour's Act indeed means the victory of the Sanatanists who are always intolerantly and fanatically eager to exclude, not the victory of those who wish to include. Persons who marry under Gour's Act are cut away from their community. What is the gain to them? They are only able to retain the name Hindu, but for all practical purposes the 'attributes', as we may say, of Hinduism, are lost to them. They lose the power of adoption; they lose the power of remaining in the joint family to which they may belong. They are automatically cut off from that joint family, even if the joint family be willing to retain them within its fold. The Honourable the Law Member raised difficulties about it. I am afraid either his speech was not properly reported or I am unable to understand it. He said:

"Now, looking at it from this point of view, the daughter of a Mochi marries in a Brahmin family. It is the idea of Dr. Bhagavan Das that this couple will have the right of adoption and the Mochi-Brahmin combination will lead to an issue whom the other co-parceners will be bound to adopt for purposes of partition and succession."

I have not been able exactly to understand the significance of "co-parceners will be bound to adopt". Would the other coparceners be bound to adopt the issue of such a marriage under my Bill? Why need they? If any of the other coparceners wants to adopt any other boy, in accordance with the conditions of the law, nothing in this Bill would prevent him from doing so. Why should he adopt the issue, or be compelled to adopt the issue, of this Mochi-Brahmin alliance? This is an extreme case that has been taken, but really it is not right to think that only such extreme cases will be of frequent occurrence. In any case we are advancing to the time when Mochis will no longer be held in the contempt in which they have so far been. My Honourable friend, Mr. Bajoria, also postulated a similar case. He used the word Chamarin instead of Mochi. My argument applies to his words also. Chamar means etymologically Charmakar; it is a translation of the old Sanskrit word. Charmamkar, a maker of or dealer in leather goods. I find today that Brahmana and Vaishya gentlemen are in the leather trade; perhaps also some Kshatriya or Khattri gentlemen. If the proper significance of the name were clearly understood, then, whatever their hereditary name may be, their real varna-name, real caste-name, would be Charmakar. Any way, the fact remains that the scorn and contempt which have so far attached to the name Mochi, Chamar, etc., are slowly disappearing, and quite rightly disappearing.

**Babu Baijnath Bajoria:** There is no contempt against Mochis or Chamars. The politicians have agitated them.

**Dr. Bhagavan Das:** I fail to see the significance of my Honourable friend's remarks. Further, we have to consider that, even if Gour's law automatically severs the connection, with the joint family, of such a pair as has contracted an inter-caste marriage, it does not automatically effect a partition of the property, does it? I am ignorant of matters of law, and I should be very happy to be enlightened by some of my colleagues who have more learning in this matter, but I believe that it does not effect an automatic partition of the property. If a partition of the property is wanted, the coparcener in the property who desires it, whether one of the inter-caste-marriage pair, or another, will still have to go to the civil Courts, so that that difficulty is not avoided. If the newly wedded pair are living in the family-house, they will not be automatically turned out of it by Gour's Act? In the Select Committee, if my Bill is very kindly permitted by the House to go to a Select Committee, we could easily make provisions which would be in advance of Gour's Act, which would enable two persons who enter into such an inter-caste marriage to remain in the joint family if the joint family is not unwilling to keep them within its fold. Some simple measure could be devised by which any member of the joint family might express his or her unwillingness to remain joint with such a pair, and then the pair would be compelled to go out of the family, and all the parties concerned would have to arrange for a partition of the property. Even after the partition of the property, I am not convinced that there is sufficient reason for compelling them to be governed by the Indian Succession Act. Why should they not continue to be governed by their own old Acts the Mitaskhara law or Jimuta-Vahana's Dayabaga, or any other laws that are prevailing in the Maharashtra, or that law of matriarchal or matrilineal inheritance which, as a very remarkable exception, is prevailing in the southernmost part of this country? Incidentally, I would like to know how my Honourable friend, Mr. Bajoria, and those of his way of thinking, who insist upon "the Shastras" so insistently and persistently—how do they reconcile all these very different Shastras which are prevailing in different parts of the country? He quoted a verse from the Gita, which is very much on the lips of orthodox Pandits, which lays down that the Shastra is to decide what should be done and what avoided. But what *Shastra*? Now, the word *Shastra* occurs in the Gita only five times; once in a question by Arjuna, and four times in the verses spoken by Krishna; and Krishna expressly defines the Shastra he is speaking of as "Idam guhya-tamam shastram i.e., "This Gita-shastra or Adhyatma-Shastra that I am teaching to you". So, it seems to me that Gour's Act is really retrograde in that it helps the process of cutting off people from the Hindu community, and it is also *mischievous* in that it prevents the up-lifting, to a higher level of scientific understanding of the real significance and purpose of the class-caste system, of the less instructed, the less thoughtful, and the more blindly following masses of the people who would otherwise have been beneficially influenced by these advanced persons remaining in their midst. Therefore, I hold that that Act is retrograde; I would rather not use the harsh word "mischievous"; let us say it is very harmful. My Bill avoids those things. It tries to retain these people within the fold of the Hindu social organisation, and thereby to influence others to advance also. Instead of

[Dr. Bhagavan Das.]

being retrograde and mischievous, it is really very progressive and beneficent. The Honourable the Law Member said, "It is no good merely repeating the *parrot cry* that it is permissive". He will recognise that I have been only imitating the *eagle scream* of Sir William Vincent; not that I consider a parrot to be an inferior bird to an eagle. According to Hindu belief, as my Honourable friend, Mr. Bajoria, will agree, a parrot is of the Brahmana caste, whereas an eagle belongs to the Kshatriya caste; and for a good reason. The eagle is obviously not so intelligent as the parrot; it cannot speak with the human voice, as the parrot can . . .

**Babu Baijnath Bajoria:** I do not know the sociology of animals, beasts and birds.

**Dr. Bhagavan Das:** If my Honourable friend would only take the trouble to read his own Shastras properly, he would acquire a lot of very useful and interesting and instructive information. Animals are divided into castes, stones are divided into castes, quadrupeds, horses, elephants, are divided into castes, cattle are divided into castes. That is the old way of making classifications of different qualifications. An animal, a stone, of such and such a caste is useful for such and such a purpose; that is the old technology. As modern science has its own technical terms, so these were the old technical terms. The parrot is dedicated to the Goddess of Learning, Sarasvati, for this very good reason. She is the Goddess of Learning and the parrot is a very intelligent bird; an eagle is not such. The eagle is dedicated to the war-like Vishnu when he is in his martial moods. I hope I have sufficiently disposed of the depreciatory and decrying effect of the expression "parrot cry" as used against my poor little Bill. I might even mention how the other members of the joint family may benefit materially, now and then at least, if they allow such a pair to remain within their fold. Obviously persons entering into such a marriage would be educated and enterprising, probably able to make a lot of money, which is the great God of modern civilisation and has by no means been despised in the Kali age in India either. Well, if these people remain in the joint family and if they happen to have no issue, all their savings would go to the other members of the joint family. They would benefit by it, but if the inter-caste pair are automatically cut off from the joint family, the joint family loses these reversionary rights. The Law Member has said: "Although they will marry according to the rites which are not acceptable to Hindus, yet they must continue to remain in the Hindu fold against the wishes of the other members of that community". But, Sir, many of these people marry according to the rites which are very acceptable to Hindus, and many Brahmanas, who are advancing in thought with the times and are professional purohitas and priests, are quite willing to take part in, and as a fact, I know of cases in which they have actually officiated at, the ritualistic and ceremonial celebration of such marriages according to the Vedic rites. Surely, Babu Baijnath Bajoria is not a better Hindu than Mahatma Gandhi or Mr. Rajagopalachariar. Mahatma Gandhi is undisputedly the greatest leader today, not only of Hindus, but of the whole Indian people, and Mr. Rajagopalachariar is also one of the foremost in the rank of leaders that comes next after the unique Mahatmaji. He is very highly honoured by the Indian people and of course by the Hindus. Now, these two great leaders have permitted their children to contract an inter-caste marriage and one is a Brahmana and the other is a Vaishya.

**Babu Baijnath Bajoria:** My views about sociology are quite different from those of Mahatma Gandhi and Mr. Rajagopalachari.

**Dr. Bhagavan Das:** As there was no such provision in the Statutebook as my Bill endeavours to place upon it, these two young people, the son of Mahatma Gandhi and the daughter of Sri Rajagopalachari, were compelled to perform a civil marriage first before a Registrar; but they were not satisfied. They took the sacramental view of marriage, and therefore they were married again according to the old Vedic Hindu rites and Brahmana priests officiated at and blessed that marriage.

**Babu Baijnath Bajoria:** That marriage was condemned throughout the country.

**Mr. Bhagavan Das:** It was not. If he says 'in his particular household' or in a number of households of his way of thinking, I am willing to agree. Now, Sir, as Mr. Bajoria repeatedly and insistently claims to be the representative of the whole country, to my very great regret and also to my helplessness, I am compelled to point out the nature and extent of his representativeness of the Hindu people. This is a sort of digression which has been forced upon me and upon the House by the exuberance of my young friend, Mr. Bajoria. Here is a copy of a letter which was sent to the Secretary of the Legislative Department of the Government of India by the General Secretary of the All-India Aggarwal Maha Sabha, Ajmer. It reads:

"Dear Sir : At the 17th Annual Session, held at Calcutta, on the 18th, 19th and 20th July, 1936, under the presidency of Mr. Ram Kishen Dalmia of Bihar" [*I am sure Babu Baijnath Bajoria will recognise Mr. Dalmia as a very charitable and generous gentleman and one of the ornaments of the Marwari community—*] "my society has passed various resolutions, copies of which are forwarded herewith in support of, or in opposition to, the several Bills pending before the Legislative Assembly. It hardly needs mention that it is my community, among its well-to-do compeers, which suffers most at the altar of the evil of child marriage, and infant and maternal mortality, also the number of child widows and child wives is very high in my community owing to this suicidal custom."

Sir, I received a letter from Benares only yesterday in which it is said that a girl under the age of 14 has just died there in child birth.

**Mr. President** (The Honourable Sir Abdur Rahim): It has nothing to do with this Bill.

**Dr. Bhagavan Das:** Yes, it has, because, people, who marry under this Act, will, almost necessarily, be grown up people, much above the Sarda Act age, and so child marriage will also indirectly be counteracted by this Bill. The letter goes on:

"I am not ignorant of the opinion of a section of my community which is against all progressive social legislation, but you will agree with me that this opposition is simply based on superstition and traditional belief."

This is the language which has been used by the General Secretary of the All-India Aggarwal Maha Sabha: He goes on to say:

"My society has been working hard to mitigate, if not to put an end to, this evil custom for the last sixteen years, and is spending thousands of rupees every year for propaganda work against social evils. But experience has proved that when public opinion is sufficiently advanced, as it is in this case, concurrent legislation must be the logical conclusion and prove a boon, and such legislation should not be of the type of the Sarda Act, conceded in a miserly and worked in a half-hearted spirit."

[Dr. Bhagavan Das.]

The Secretary might very well have mentioned the Gour Act, in stronger language:

"My society is also responsible for launching prosecutions against offenders under the Sarda Act, and has come to the conclusion that the Sarda Act in its present form is a very faulty and ineffective legislation and can do little good to the society . . ."

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair would point out that all this is not relevant to this discussion.

**Dr. Bhagavan Das:**

"I have further to inform you that the conference of Marwari women held on the 21st July, 1936, in the pandal of the All-India Aggarwal Mahila-Sabha under the presidency of Shrimati Sajjan Devi, a Marwari lady, supported or opposed the Bills in still stronger terms, copies of which are also enclosed herewith."

Before concluding, I would like to say a word about the amendment to the Sarda Act introduced by Babu Baijnath Bajoria, M.L.A. The gentleman belongs to my community, but he will not find a single supporter even, amongst the five members of my community in the Legislative Assembly. Moreover, a Resolution opposing the said amendment was moved by Shrimati Kunti Devi, a young lady, and seconded by Shrimati (Mrs.) Rangal Jagodia, an elderly lady, both belonging to the community of Mr. Bajoria, in the Women's Conference.

So, Sir, this will tell the House what representative character is assigned to Babu Baijnath Bajoria by his own limited community, in the first place, and the larger mass of the Hindu people, in the second place. You will kindly permit me to read out one or two references to Babu Baijnath Bajoria in the resolutions. The men's conference says:

"This *Mahasabha*, while considering the amendment of the Sarda Act introduced by Babu Baijnath Bajoria as encouraging the evil of child-marriage, emphatically protests against it."

Then, the Marwari Women's Conference held at the same time says:

"This conference of Marwari women considers the amendment introduced by Babu Baijnath Bajoria to the Sarda Act as fatal to the interests of Indian womanhood and while strongly protesting against it requests the Members of the Legislative Assembly to vote it down."

And these resolutions, incidentally, support the Hindu Women's Property Bill introduced by Dr. Deshmukh and the Child Marriage Amendment Bill introduced by Mr. Das. Well, Sir, I now return to the Honourable the Law Member. In pointing out the many defects of my Bill the Law Member said that:

"the Bill is a retrograde measure, because if Dr. Bhagavan Das is after reforms which are according to established modern ideas."

But, Sir, I am not at all interested in many modern ideas. I am not one of those who wish to imitate everything of the modern, i.e., western civilisation, bad as well as good. While I am perfectly willing, nay, desirous, to accept such of its physical science as is really helpful to humanity, I am exceedingly averse to its much too crassly materialistic outlook upon what Vaidika Dharma, literally "Scientific Religion" teaches us to be highly spiritual and sacred domestic relationships and family ties, not only of the bodies but of the souls. I am interested in the very



ancient, traditional, indigeneous, and true Vedic ideas. I do not like the Word "Hindu", as I said in my speech the other day. It embodies a wrong idea. If you like, you can use the word "Vedic religion"—a term which literally means "scientific religion". The word "Hindu" is a geographical designation and not a religious denomination at all. However, it has come into currency, and so we have to use it. As I was saying, I am not interested either in all established modern ideas or in the current degenerate practices of Hinduism. What I am interested in is the re-establishment of the real, indigenous, traditional, scientific and spiritual interpretations of the great Vedic texts and the ancient laws given by the old Smṛiti-karās. The Honourable the Law Member said:

"As he himself pointed out, whereas Dr. Gour's Act of 1923 insists on monogamous marriage, this Bill does not. But he has one answer for all that, and that is that all that can be done in the Select Committee."

Well, Sir, as I have said, I have the support of Sir William Vincent in that wish of mine. I am perfectly willing that a clause should be added insisting upon monogamy in this Bill of mine. As to the right to divorce, the Law Member said, "those who believe in reforms would give women the right to divorce. Of course I am not discussing the question as to whether the right should be given or not". Thus the Honourable the Law Member does not express his own views, but he adds, "surely the right to divorce is a step in advance so far as reforms are concerned, and that Dr. Bhagavan Das is not willing to do so unless it is covered by a general formula. 'Well, all that can be done in Select Committee'."

I am not sure, Sir, that, if the right to divorce is given to the husband and the wife alike in the Select Committee, and obviously it must be given to both if at all, I might not prefer to withdraw my Bill altogether. I do not believe in divorce. I think marriage is a discipline also and not merely a picnic, "on today and off tomorrow". I think people having once married, or being married by the wisdom of their elders—wisdom, not superstition—or having married out of their own choice, by the *gandharva* or *svayamvara* form of marriage—Manu has provided eight forms, to suit different temperament,—should abide by each other, train each other, bear and forbear towards each other and live out their life properly. I do not believe in divorce. In the U. S. A., they now have one divorce for every two marriages, in the larger towns, and one in seven in the average for the whole U. S. A. I do not see my friend Mr. Umar Aly Shah here, but I have brought a copy of the *Parashara Smṛiti* for him. Parashara expressly permits re-marriage in certain cases for specific reasons. He also praises marital fidelity and constancy unto death and beyond. Manu expressly says that:

*"Yādriṅ-guṇena bhartṛā stṛī eam-yujyeta yatha-vidhi,  
 1ādrig-guṇā sād bhavati, tamudren-eva nimna-gā.  
 Akṣu-māla Vasishthena tampr-kṛā-dhama-yonī-jā.  
 Shāraṅji Manda-pālena, jagām-ābhyarhamityatām."*

"As is the nature of the man who the woman marries, such becomes her nature also. If the husband's nature is bad, the wife's nature becomes bad. If the husband's quality is good, the wife's quality becomes good. Aksha-mala (who was more low-born than the Law Member's Mochi or Mr. Bajoria's Chamarin) was married to the

[Dr. Bhagavan Das.]

great Rishi Vasishtha; and Sharanji, the Daughter of a deer-hunter, was married to the great Rishi Manda-pala; and thereby both the ladies became highly honoured (Dozens of other instances are mentioned in the Puranas). On the other hand, if the wife's quality is extremely good, the husband's evil nature is conquered thereby and is transmuted and sublimated into goodness."

As Parashara says:

*Vyāṇ grahi yathā vyāṇam balād uddharate bīḍi,*

*Evam pati-vratā nārī, bhartaram nīcha-gaminam,*

*Api vā narakam prāptam, Syat chet tam anu-samethika.*

This is the old way of writing of the Smritikaras. They wrote like the Biblical prophets and not like the modern darftsman. So, 12 Noon. their language may seem exaggerated, but it appeals to the Hindu mind. The language and the thoughts of Manu pervade the whole of Hindu life today, even though this may not be recognised consciously. The verses that I have last quoted mean: "As the strong snake-charmer drags the resisting snake out of its hole, so a good wife drags her husband out of his evil ways, and if he dies because of his evil ways and his spirit becomes earth-bound because of its gross cravings, and the wife decides to follow him in death deliberately, (not flung into the fire by criminal and wicked relatives), in that case, even if that earth-bound spirit of the husband should have descended into purgatory, this holy spirit of the woman is potent to drag that spirit out of that purgatory, and both shall rise to the higher regions." And we know that such *voluntary* abandonment of the fleshly body, by wife, or by husband, because of sheer inability to live on in it after the death of the intensely-loved partner, cannot be prevented by any law or any executive action. Such cases are occurring in India today, and even in the west. The abandonment of the body need not at all be by the way of fire; it is not unoften by cessation of heart-action, of the will-to-live. Well, such is the express statement of the Rishis, I am afraid it would tire the House if I were to relate what, if I remember rightly, has been recorded by one of the investigators of the European Psychical Research Society. These Psychical Research investigators believe in the fact of the spirit remaining after the body of flesh and blood has been cast away. In the report of the case investigated by this Psychical Society we find a most interesting comment on these verses of Manu and Parashara. Parashara, as I have said, permits widow re-marriage:

*"Nashite, mrite, pravrajite, klibesha, patite patau,*

*Panchasu-āpatau nārīnām patir-anyo vidhīyate."*

"If the husband should become lost and not to heard of for many years, or should die, or take Sanyasa, and so undergo a civil death, or be impotent, or should become 'fallen', 'de-graded' into sin and crime, then a woman, if she be not of the higher spiritual temperament, may take another husband". I believe there are some such provisions in the English law also.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member does not appear to be justified in dwelling now at length on the question of remarriage and divorce. He must confine himself to the Bill.

**Dr. Bhagavan Das:** Very well, Sir. I was led to all these considerations by the fact that the Law Member has expressly referred to the right of divorce.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member can mention that it can be provided in the Select Committee, but he cannot have a disquisition on the law of divorce.

**Dr. Bhagavan Das:** But the Law Member said. . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair has given its ruling.

**Dr. Bhagavan Das:** I am not questioning your ruling, Sir; I am only explaining my position. The Law Member said that if I wanted reforms I should have done so in the Bill. I am explaining why I have not done so. The Law Member further said: "That is the reason why the Women's Association will not support this Bill. They say it is nothing. They want full reforms. They want the right to divorce and that is not to be found in Dr. Bhagavan Das Bill." If you will permit me, Sir, I think the House is on a sort of half-holiday, because of the absence of my Party, and it may not perhaps resent if I put all these considerations before it for some time longer. But if it is likely to resent my speech, then I shall close as soon as you wish me to do so.

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair cannot have any such bargaining. The Honourable Member has only to confine his speech to the Bill before the House.

**Dr. Bhagavan Das:** I am trying to confine my speech to my Bill according to my lights, but I confess that my lights are dim and feeble, and I am grateful to you for helping me to make them brighter from time to time. I may be permitted to say that obviously I have been left without support, and while I recognise fully that the Chair should hold the balance evenly, yet if it inclines the balance slightly in favour of the weaker and more helpless party, in such special circumstances, it will not be any real breach of impartiality.

**Mr. President** (The Honourable Sir Abdur Rahim): I am afraid I cannot recognise that the Honourable Member is either weak or helpless.

**Dr. Bhagavan Das:** My Party Members have been spirited away from the House by the Government, by the way in which it has fixed the dates of elections. If they were here, they would have been very willing and eager to help me in carrying through this measure. They would have taken up my tale, and I would not have been compelled to strain my lungs so much. I suggested the postponement of this debate,

[Dr. Bhagavan Das.]

but the Government have decided against it, because they feel, with the tactical skill born of long practice of hundreds of years, that now they have the chance of carrying out their determination to commit infanticide upon my poor little Bill without any chance being given to me. It is for this reason that they have not accepted the postponement of the debate and I am battling against odds. I came prepared with all these volumes, should my vitality last, to pour my very relevant arguments upon the House till the end of the day; but, while I can undertake to battle with all these 26 gentlemen on the opposite benches single-handed, I am powerless against you. I must submit to your ruling at once and so I shall try to finish. Briefly, one of the main arguments advanced by the Honourable Members who opposed the Bill was that the Hindus as a whole, to whom the Bill applied, do not want it and so it should be thrown out by the House. Every elected Member who opposed the Bill, with the exception of Mr. Baijnath Bajoria, clearly expressed his own sympathy with the principles of the Bill, even though he opposed the motion for sending it to the Select Committee. Bhai Parma Nand even supported the referring of it to a Select Committee, but considered the Bill rather premature or inopportune. For reasons, which I do not know whether I should go into, he fortunately or unfortunately happens to be the head of the Hindu Mahasabha, and he has therefore to sit on the fence between the Hindu Mahasabha on the one side and his Arya Samajic better conscience and higher mind on the other. He has indeed frankly confessed that he finds himself "in a fix". Therefore, while he has been compelled by his heart and head to support my motion for reference of the Bill to a Select Committee, he is also compelled at the same time to dub it with his lips as inopportune or premature. I do not know when he will consider it opportune or mature, perhaps some centuries hence. However, I thank him for the small mercy he has shown to my Bill. This brings forward the old old question of the functions of the Members of a Legislature as to whether they are merely delegates to voice the opinion of the less instructed masses of the people or are in the House to help the general welfare, the intellectual, moral, and physical uplift of the people according to the highest dictates of their conscience. I submit that we are here to serve the country according to the best of our ability and to guide and mould the uninstructed part of public opinion in accordance with the better instructed part of that same public opinion. No consideration of cheap popularity should deter Members from voting in favour of the Bill simply because of the feeling, real or fancied, that Hindus generally are against it—fancied as I have tried to show. I should be ashamed to say as a Member of the Legislative Assembly that both my head and heart support this measure but that my lips will not support it because of considerations of policy or popularity or party. I do not say that we should disregard all public opinion. Nobody strictly speaking does. It is indeed impossible to do so. We must see to the quality of thought of those who support the measure on the one hand, and those who oppose it on the other. Self-government, if it is to have any meaning, should be government by the Higher Self of the people, and not by their lower self. The opinion of the best educated, the most public-spirited, the most self-denying and philanthropic and most useful members of society alone should count in this House. The old tradition is exactly this. I

have already quoted Manu's injunctions as to who should be the legislators and the qualifications they should have:

"Not thousands of ignorant people, but even ten, or even three, or even one far a sighted persons or person, deeply versed in human nature, and profoundly educated in the Science of the Soul, shall form the Legislative Assembly, *parishat*, of the king."

I strongly affirm that the best informed opinion, of Governors and Councillors and Judges and public bodies, all duly educated and experienced men and women throughout the country is in favour of the Bill. Sir, if you will permit me, I shall read out some of those opinions. I have got here a whole bunch of Resolutions which have been sent to me by various bodies supporting the Bill and making suggestions for the inclusion of a clause as to monogamy. None of them insists upon divorce, none of them insists upon severance from the joint family, none of them insists upon the Indian Succession Act being applied to them, but most of them suggest the addition of a clause as to monogamy, and I am perfectly willing to accept that. Do you think it necessary that I should read out some of the opinions.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member should remember that he is replying. The Chair is sure, he realises that.

**Dr. Bhagavan Das:** I am replying to the asseveration that Hindu opinion is generally against my Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): It does not follow, therefore, that the Honourable Member is entitled to read the whole lot of literature that has been sent to him.

**Dr. Bhagavan Das:** I bow to your ruling, Sir. I have had a precis made of the opinions collected by the Government themselves. I shall briefly mention the more important features of the precis. For the Bill. The Chief Commissioner of Delhi, the Chief Secretary to the Government of Sind, the Secretary to the Government of Madras, Legal Department, the Agent to the Governor General, the Chief Commissioner in Baluchistan, one Honourable Minister and one Honourable Member of the Government of Bihar. These are all for the Bill.

Now, against the Bill are: the Legal Secretary to the Government of Central Provinces, the Secretary to the Government of the United Provinces who says:

"The Governor in Council is not prepared to lend his full support to the Bill."

Perhaps he will give partial support. The Officiating Secretary to the Government of Bengal is also against the Bill.

**The Honourable Sir Nripendra Sircar:** My Honourable friend is replying. To what he is replying. No one had asserted anything about these opinions in favour of or against the Bill. What he is replying to, no one has taken this point in all the speeches.

**Mr. President** (The Honourable Sir Abdur Rahim): What the Honourable Member is trying to show is that his Bill has the support of people who were consulted on the point, and the Chair does not think it can say that he is not in order there. Only he is not entitled to quote at length from the opinions he has received.

**Dr. Bhagavan Das:** I shall try to be as brief as possible. The Governments that are neutral are, the officiating Secretary to the Government of North-West Frontier Province, the Chief Commissioner, Ajmer-Merwara; the Secretary to the Government of Orissa, the Secretary to the Government of Bihar, the Secretary to the Government of the Punjab, the Secretary to the Government of Bombay and the Secretary to the Government of Assam. So, Sir, something like seven Governments are positively in favour, and the Government of Sind even *urges* the passing of the Bill *very strongly*, because there is very great difficulty there in finding alliances within the castes and sub-castes. Perhaps now my Honourable friend, Mr. Lalchand Navalrai, will be able to support me here.

**Mr. Lalchand Navalrai:** If you remodel the Bill.

**Dr. Bhagavan Das:** Seven Governments are neutral, and one, the Government of Bengal, is positively against. One or two are undecided and doubtful.

This is a precis of Government opinions.

Then more important than the Government opinions, are the opinions of judicial officers. In favour of the Bill is the Registrar of the High Court, Appellate Side, Bombay. "The High Court of Judicature almost unanimously supports the Bill." The names of those who support are given: In the Punjab High Court, the Honourable the Chief Justice, the Honourable Mr. Justice Bakshi Tek Chand, the Honourable Mr. Justice James Addison, the Honourable Mr. Justice Jai Lal, the Honourable Mr. Justice Monroe, the Honourable Mr. Justice Abdul Rashid, all these are in favour of the Bill. In the case of the Madras High Court, the Honourable the officiating Chief Justice and Justices Pandurang Rao, Madhavan Nair, Stoddart, Wadsworth and Horwill are in favour of the Bill. That is to say, in the High Courts of Bombay, Oudh, Bihar, Punjab and Madras, 21 Judges altogether are in favour of the Bill. The High Courts of Bengal and Burma are neutral and express no opinion, and 9 Judges of Oudh, Bihar, the Punjab and Madras are neutral. Six Judges of Oudh, the Punjab and Madras are positively against the Bill.

Then, the District and Sessions Judge of Bangalore, the Additional Judicial Commissioner of Sind, the District Judges of Ahmedabad, Satara, Karnal, Jullundur, and Amritsar, are all positively in favour of the Bill. The District Judge of Satara specially points out the difference between Gaur's Bill and this Bill, and deliberately, on principle, supports this Bill as a measure in advance of Gaur's Bill. The District Judge of Rangpur is neutral. Against it are the Honorary Sub-Judge of Nawan-shahr (Hazara), the Additional District Judge of Ajmer-Merwara, the District Judges of Ahmednagar and Thana, the Judge of the Assam Valley Districts, the District Judge of Rawalpindi and the Subordinate Judge of Sylhet.

Now, coming to the executive officers, I will read the names of those who are in favour of the Bill. The Commissioners of Coorg, of the Northern Division of Bombay, the Central Division of Bombay, the Southern Division of Bombay, the Collector of Ahmedabad, the Deputy Commissioners of Gujranwala and Hoshiarpur and the Sub-divisional Officer of Rajanpur,—all support the Bill. The Collector of Ratnagiri is neutral. Against the Bill are the Collector of Belgaum, the Commissioner of the Nagpur Division, the Accountant-General of the Central Provinces and the Commissioner of the Berar Division.

Then, as regards the opinions of prominent persons on the Bill, all of whom were consulted by Government themselves; six are for the Bill and four are against it, and none neutral.

As to the opinions of Advocates, Public Prosecutors, and Bar Associations, of the 9 gentlemen and Associations who have given opinions in favour of the Bill, the Bar Library of Calcutta has also given an opinion in favour of the Bill, although, as we know, for various reasons, opinion at the present moment in Bengal is being hindered in its progress by communal considerations. Only one person is neutral, and four persons and Associations, including the Bar Associations of Rawalpindi and Chittagong, are against it.

Then, as regards opinions of religious or semi-religious Associations, here naturally there are only two in favour, and the Sanatanists who have a number of very small Associations scattered throughout the land give their opinion against the Bill to the number of 11. I think Government have received something like two thousand telegrams against my Bill, and many of them pretend to be from large Associations, but I believe the Leader of the House himself will bear me out when I say that most of these Associations consist of only one person or at most of two.

Sir, I will not take up much more time of the House. I will content myself with the hope that Members have all read carefully the opinions that have been collected by Government. If they have done so, that would be enough for my purpose. I am very much inclined to read out extracts from the speeches which Mr. Patel made, in making his motion for reference of his Bill to a Select Committee, and also from the speech of Mr. Jinnah who strongly supported the Bill, but I do not think that is necessary. I also wished to read out some pages on the subject of the nature and the origins of the caste system, from the Census Report of 1931, and some pages from Mr. Vincent Smith's Oxford History of India, in order to rebut the imperfect, and, therefore, misleading quotation from the latter author, which was read out by Mr. Bajoria; but it seems no time is available to me to do so.

I will say, in conclusion, that the reformers are always few in number, in all times and in all countries, but they act as a leaven to raise up the whole mass of the country. I am quite prepared to admit that the persons who are striving for real regeneration and reconstruction of Hindu society in particular and Indian society in general are to be counted only by tens of thousands yet, and not by millions. But I claim that we are voicing the sentiments of the best and highest thoughts and aspirations of the people, and that the higher instincts of the mass of the people, of their sub-conscious or super-conscious mind, are slowly and steadily responding

[Dr. Bhagavan Das.]

to the upward call, and the people are giving up their ignorance and superstition. Only a hundred thousand or so voluntarily suffered the legal and illegal consequences of civil disobedience at the hands of Government, but who can deny that the hundreds of millions of the people are with the Congress and for the Congress? What social reform has been ever brought about by insisting that the majority of people should be in favour of it from the very beginning? If the majority were actually in favour of it, there would be no need for legislation at all, as I tried to show in my first speech. Did the Government of that day, long long ago, when public opinion was far less advanced than today,—did that Government take a plebiscite when suppressing the custom of Suttee? Did Government, when they passed the Widow Remarriage Act very many decades ago, insist that the Hindus as a body be in favour of it? If they had done so it would never have been passed. Even today, so many years after the Act has been on the Statute-book, how many Hindu widows are actually remarried under that Act? But who can deny that it was a measure of barest justice and humanity advocated by that great and generous soul, the venerable Pandit Ishwara Chandra Vidyasagar, a Hindu of Hindus? Take the Sarda Act, the most reasonable piece of social legislation that the Assembly has enacted. Nobody can affirm that the Hindus as a mass were in favour of that measure or are so even today. Yet it was a most necessary, right, and righteous enactment. Only a few days back, I learn, there has been a death at Benares of a child mother of less than 14 years of age. The fact that the people have been and are hugging social evils to their hearts is only the greater reason for social legislation. To insist on a majority of the ignorant being in favour of a reform before it can be passed into law seems to me absurd, despite my great respect for my opponents. In the United States of America they forced the Southern States to abolish slavery and also compelled them to remain within the union, by means of a great civil war. Who in this House will venture to say that it would have been better for Abraham Lincoln, the second greatest of the Presidents of that great country, to let the Southern States secede and continue to have slavery?

I have to say that it is only on matters of social legislation that the Government can co-operate with the people and further their real interests. On matters political we are divided, it seems, at present by an impassable gulf of warring interests. But why do you refuse to co-operate with us in matters which do not adversely affect your political interests and which help the people greatly? Or, perhaps there is a deep-seated connection between social welfare and political welfare, which diplomatic subtlety discerns and therefore seeks to hinder. In the days to come, when the British military occupation of this country becomes a matter of past history and honourable inter-dependence has been established between Britain and India, then Britain will be ashamed to be remembered only because of the repression of the people's efforts for self-advancement and self-government, and not remembered for more helpful social legislation like the suppression of Satti, not remembered for forcing on the spread of really useful cultural and vocational education, for acts to abolish social evils. Social legislation is the only common ground on which we can all meet—Government and Congress, Hindus and Muslims, men and women. Let us not throw away the few opportunities for co-operation and good will that we have. I conclude my reply with another appeal to the more generous and higher mind



of the Honourable the Law Member and pray him to let this Bill go to a Select Committee. He will have it in his power to shape it almost as he likes there, after due consultation with other representative Members of this House. If there is anything in the Bill which is imperfect, he can give it perfection. If there is anything in it which is wrong or vicious, he can have it taken away. I pray him to let it go to the Select Committee and I pray all my fair-minded and large-hearted colleagues in this House to vote for my motion that the Bill be referred to a Select Committee.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill to validate marriages between different castes of Hindus be referred to a Select Committee consisting of the Honourable the Law Member, Mr. M. Asaf Ali, Pandit Krishna Kant Malaviya, Rao Bahadur M. C. Rajah, Mr. Ghansham Singh Gupta, Dr. N. B. Khare, Mr. B. Das, Mr. Sri Prakasa, Babu Baijnath Bajoria, Seth Govind Das, Mr. Amarendra Nath Chattopadhyaya, Raizada Hans Raj, Mr. Sham Lal, Babu Kailash Behari Lal, Mr. N. M. Joshi, Sir Muhammad Yakub and the Mover, with instructions to report on or before the 31st March, 1937, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Assembly divided.

#### AYES—14.

Asaf Ali, Mr. M.  
Azhar Ali, Mr. Muhammad.  
Bhagavan Das, Dr.  
Datta, Mr. Akhil Chandra.  
Deshmukh, Dr. G. V.  
Ghiasuddin, Mr. M.  
Gidney, Lieut.-Colonel Sir Henry.  
Joshi, Mr. N. M.

Maitra, Pandit Lakshmi Kanta.  
Mehr Shah, Nawab Sahibzada Sir  
Sayad Muhammad.  
Muhammad Ahmad Kazmi, Qazi.  
Murtuza Sahib Bahadur, Maulvi  
Syed.  
Sant Singh, Sardar.  
Yakub, Sir Muhammad.

#### NOES—38.

Abdul Hamid, Khan Bahadur Sir.  
Ahmad Nawaz Khan, Major Nawab  
Sir.  
Ahsan, Maulvi Muhammad.  
Anderson, Mr. J. D.  
Bajoria, Babu Baijnath.  
Bajpai, Sir Girja Shankar.  
Bansidhar, Rai Sahib.  
Bhagchand Soni, Rai Bahadur Seth.  
Bhide, Mr. V. S.  
Chanda, Mr. A. K.  
Chapman-Mortimer, Mr. T.  
Dalal, Dr. R. D.  
Ghuznavi, Sir Abdul Halim.  
Griffiths, Mr. P. J.  
Jawahar Singh, Sardar Bahadur  
Sardar Sir.  
Lal Chand, Captain Rao Bahadur  
Chaudhri.  
Lalchand Navalrai, Mr.  
Lalit Chand, Thakur.  
Lloyd, Mr. A. H.

Mehta, Mr. S. L.  
Metcalfe, Sir Aubrey.  
Mukherjee, Rai Bahadur Sir Satya  
Charan.  
Nagarkar, Mr. C. B.  
Naydu, Diwan Bahadur B. V. Sri  
Hari Rao.  
Noyce, The Honourable Sir Frank.  
Parkinson, Mr. J. E.  
Rajah, Raja Sir Vasudeva.  
Rau, Sir Raghavendra.  
Roy, Mr. S. N.  
Sale, Mr. J. F.  
Sher Muhammad Khan, Captain  
Sardar Sir.  
Sircar, The Honourable Sir Nripendra.  
Slade, Mr. M.  
Thorne, Mr. J. A.  
Todd, Mr. A. H. A.  
Tottenham, Mr. G. R. F.  
Verma, Rai Sahib Hira Lal.  
Zafullah Khan, The Honourable Sir  
Muhammad.

The motion was negatived.

#### THE HINDU WOMEN'S RIGHTS TO PROPERTY BILL.

**Dr. G. V. Deshmukh** (Bombay City: Non-Muhammadan Urban): Sir, I beg to move:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to Property, as reported by the Select Committee, be taken into consideration."

[Dr. G. V. Deshmukh.]

Sir, in urging on this House to accept the Report of the Select Committee, I must say that it is absolutely the minimum that we could possibly do for the Hindu Widow. As I mentioned in my last speech, there has been no innovation of any kind; on the other hand, there has been a restoration. Sir, the plight of Hindu widows is well known. If the property is divided, then she is supposed to get a limited estate, if the property is undivided then she is supposed to get a maintenance. Those who know something about the Hindu tradition and Hindu culture will readily realise that all these devices of divided and undivided property, moveable and immovable property and so on were made mainly and solely for the purpose of depriving the Hindu widow of her legitimate rights.

**Mr. Lalchand Navarai** (Sind: Non-Muhammadan Rural): Where do you get it from?

**Dr. G. V. Deshmukh**: If you want to know where I have got it from, I shall tell you. If Honourable Members, especially those who are conversant with law, had not restricted their time and knowledge only to know the case law or the Hindu law as it exists today, and if they had spared a little time out of their money-making business to go more into the literature in order to understand what is the original Hindu law, I am sure, Sir, a question like the one just put from that side would never have been asked by a lawyer like my friend, Mr. Lalchand Navarai.

**Mr. Lalchand Navarai**: I think a lawyer knows more than a Doctor does.

**Dr. G. V. Deshmukh**: I shall tell you presently what is the position of a Hindu widow today. If she gets a property, she gets a limited property. My lawyer-friend might know that this limited property is not originally Hindu. Can he claim that it is absolutely Hindu? If he does so, then I may say that he does not know anything about the Hindu law. I may tell him that this idea of limited property is not originally Hindu. We are supposed to be ruled by the Mitakshara law. I will challenge him or any other Hindu to say that in the Mitakshara law there is any such thing as limited property. This idea of limited property came to us as an importation from our rulers. And it did not come alone. Side by side with it, we also got the so-called reversioners. Now, I want to ask a question. Is there any such thing as reversioners in Hindu law? Is there even a Sanskrit word for it? And yet my legal friends here will hug this limited property and reversioner as pristine and pure Hindu law. Sir, my Sanatanist friends will spend money in sending about two thousand wires to my friend the Honourable the Law Member pointing out that if any change were introduced it would go against Hindu religion, and that religion is in danger. Sir, all this opposition comes purely out of ignorance, prejudice and superstition, and, what is more, lust and self-interest. All this is masquerading, and it is really shameful, Sir, that all this has been masqueraded under law as religion, and under the cloak of religion all kinds of practices which are repugnant, which are foreign, to the pure principle of Hindu law have been introduced. What kind of reversioners do we get? There was no such thing as a reversioner in Hindu law before. Look at the rights that a reversioner has. The reversioner is a free-booter. He can harass the widow who is without the protection of her husband or a son; a widow who is absolutely without any protection can be harassed to his heart's

content. His interest is supposed to be contingent. It is not even a vested interest, it is a contingent one. No rules of limitation, adverse possession, contract—nothing will apply to him. He can challenge the widow in court and say that whatever the widow is doing, that widow is doing not for the benefit of the estate, and however contingent his interest may be he can say all this and bring a suit in court. What is more. Even if the estate had been alienated for the real benefit of the estate and even if she had made an alienation in favour of her daughter which the Hindu law does not allow, even then this free-booter, this reversioner can safely come to the court and ask the court to set aside that alienation. This reversion business came to this country, as is well known, and perhaps better people versed in law might tell those who do not know enough, that the reversion came as an English idea, and when these reversioners came the poor widow was infested by these pests. The litigation in India shows that a majority of the litigation in connection with the property of widows is on account of these reversioners. Another thing is that if the poor widow wants to surrender she must surrender the whole of the property, she must surrender the whole of that claim, the idea being that she must efface herself completely amounting almost to a death. Is that the principle of Hinduism? The principle of surrender was brought to this country, but what happened to the principle of release? The idea of reversioners came from England, but it came, as usual, distorted. The idea came degenerated to this country, and whereas we had the principle of reversion the principle of release did not come in. What was the original idea of reversion? In reversion the residue that is left over goes to the reversioner; there is the principle of release, but not in the case of Hindu widows. She should surrender and she cannot even surrender a part of her property so that the rest of the property she can enjoy unharassed. On the other hand, she must surrender, no, she must surrender the whole estate. That being so, I say that this is an idea which is entirely foreign. The Hindus may pride themselves that they are being ruled by Hindu law. Nothing of the kind.

One argument that has been put forward is that Hindu law is constant, it never changes. I do not want to take more time of the House than I can help, because, certainly, the House is very sympathetic and the whole country at large is supporting my measure. In the Select Committee representatives of all the Parties, the Government, the Congress, the Nationalists, the Independents, all of them were absolutely sympathetic, not one dissenting voice was raised, and yet if objections are going to be taken like this, then I am afraid the House will have to put up with a little more time in listening to me than I had otherwise intended. I am surprised that any questions about the plight of Hindu widows should be raised at this stage. I thought I had only to move this proposition, that everybody would sympathise with it and remove this blot on Hinduism as soon as possible, and that it would not be allowed to exist for even a minute longer. Then, legal necessity came in in the case of these widows. Let me ask my orthodox friends who have given notice of amendments and also those orthodox gentlemen who spend money unnecessarily.

**Mr. Lalchand Navai:** I am not orthodox and I was sympathetic . . .

**Dr. G. V. Deshmukh:** I said orthodox gentlemen and those others . . .

**Mr. Lalchand Navai:** I was sympathetic to you so far as you were reasonable.

**Dr. G. V. Deshmukh:** We will presently see who is reasonable and who is unreasonable. My Honourable friend talks about reason. What is the reasonableness about the present position of the Hindu widow. If that position is unreasonable, can he blame me or anybody else if he gets emotional and becomes absolutely unreasonable? I say the whole system has been going on in such an unreasonable fashion that no amount of unreasonableness can be charged on the part of the person who is standing up so that the plight of the Hindu widow may be a little improved. As I mentioned at the beginning, the report of the Select Committee does not attempt any innovation. I will presently show to you that it is nothing else except going back to the position that widows occupied, one may not go back to the Vedic times, but certainly, going to the Vignaneswara and Mitakshara days, I say the Select Committee has not given them a better position than they occupied then. The Mitakshara by which my Honourable friend here and the gentlemen outside think that they are governed—I say, though they are governed by the so-called Mitakshara law, as I pointed out to you in the case of the reversioners, many things have been imported absolutely foreign, unknown to Hindu law, foreign to Hindu principles, and yet the orthodox Hindus and those others who take a false pride in Hinduism think that this is genuine Hinduism, and all this mass of foreign law, this amalgam of foreign law, as I think one of the writers on Hindu law has mentioned, —if an attempt is made to displace all this amalgam of Hindu law and put forward the real original pure Hindu principles a hullabalo is raised and the post office gains by the two thousand or five thousand telegrams which are sent over to the Honourable the Law Member and the Honourable the Home Member. What is this legal necessity by which the Hindu law governs the Hindu widows? I challenge any legal person here to say that this term came from the original Hindu law, or was it not coined by the European jurists for the special purpose and benefit of India? Then what is the idea of survivorship? Can my Honourable friend point out any Mitakshara law or any old Sanskrit literature to show that there is such a thing as survivorship?

**Mr. Lalchand Navalrai:** Then, the whole Hindu law should go.

**Dr. G. V. Deshmukh:** I do not care whether the whole Hindu law goes or not. To me a Hindu, and proud of being a Hindu—if I claim to be governed by Hindu law, I will not be governed by hybrid, or mongrel law, whether the whole law goes or remains is no question to me; it may be acceptable to my friend to accept these half-caste laws. As a Hindu, so long as I am Hindu, and I repeat again I am proud of Hinduism,—I am proud of Hinduism, perhaps I have made every attempt to know as much of the other religions also as I possibly could, and I say that at the end of that study . . . .

**Mr. Lalchand Navalrai:** Brahmin as you are.

**Dr. G. V. Deshmukh:** I am a Brahmin not only by birth but also by mentality. I have made every attempt to know what is good in all the different religions. No religion is bad, but as a Hindu I can tell you I have no reason to be ashamed of the Hindu culture or the Hindu law, but I am more than ashamed of the Hindu law that governs us today and particularly the Hindu widows today in the name of religion, in the name

of law. Survivorship came to us as an imported article. There, again, survivorship is not the same survivorship that they have in England. It came in connection with joint property; this survivorship applies in England to joint property, but it is applied to joint family property in India. Sir, I have pointed out to you reversion, I have pointed out to you legal necessity, I have pointed out to you survivorship, and there is something more. The English jurists did not think that we Indians could have been so advanced in the olden days that we could give a right of absolute property to our women. Indeed until the Marriage Act, was passed in England the husband was the sole owner of the property, the technical word used was married life or coverture. Whatever the wife earned in the married state was under the control of the husband and that idea was again saddled on to us by the English jurists and we swallowed it as something very pure and Hindu. Before that, a long time ago, our women had the absolute right of property and there can be no gainsaying the fact—I do not blame the English jurists for making all these mistakes. Both the English Judges and the English Courts—I have nothing against them, for if you go into the history what do you find? It was really men of the type to whom I have repeatedly referred, who think that the bad side or the self-interest should be incorporated into the Hinduism—it is they who are responsible.

Sir, the English jurists did make an attempt in the latter part of the 18th century to know exactly what the Hindu law is, so that  
 1 P.M. Hindus may be governed by their own laws but what was the result. They had an institution of the so-called *pandits* and naturally at that time, the British Government was very reluctant to force their views on us and British scholars like Wilson, Jones, Macnaughton and Colebrook made an honest attempt to know what the Hindu law was. How was their attempt foiled? Their attempt was foiled by the so-called *pandits* who mistranslated, who misquoted and the result was that the whole of the Hindu law was misapplied. It must be said also that at that time the researches in old Sanskrit literature were nothing like what they are today. Then, everybody thought that the Hindu law started from the Manusmritis. The proper literature not being available, the English judges and research scholars had to go only on what was offered to them. They had necessarily to make up their minds on what was presented to them by these translators. Frequently, it has been found out that these translators themselves had a suit going on and that they were also bribed by the parties in suits, so as to produce the translations which would be of help to them in their suits. I do not want to blame the British judges. They naturally were influenced by the literature which was then existing. They were influenced by the translators but since then, what has happened. I will give you my own ideas on the subject for what they are worth. Since then, they came to a certain conclusion that so far as the Hindu mind was concerned, especially with regard to the devolution of property, it was of a certain temperament, that it was of a certain mould and that mould was that they did not want Hindu women to have any absolute right in the property and the Privy Council judges perhaps justifiably say that in applying our laws we must be very careful to pay due respect to the ordinary notions and views of the Hindus with regard to their property. Naturally being frightened that they should not go against this, they took away the rights of women so far as property is concerned and this system has been perpetuated, unfortunately it has prospered with the result that eventually the whole of Mitakshara has

[Dr. G. V. Deshmukh.]

been abrogated so far as the Hindu widow is concerned. One can well imagine what happened when these translations reached England. The law there was that the husband was the sole owner of the property of the married woman. Naturally, therefore, they could not rise to the level that Hindus who were after all a conquered race could have been so advanced as to give an absolute right to their women thousands of years ago and, therefore, Sir, they interpreted it in the light of their experience and in the light of the law that was prevailing in England. The right was, therefore, cut down but even then the law was not so bad. Perhaps, there was a little margin left for the judges in India to exercise their own judgment with respect to the law relating to the right of property in connection with widows, the woman's estate or the women's property. But, Sir, what happened in 1912. After a series of changes, the death knell was sounded by the Judicial Committee of the Privy Council that so far as inheritance and partition were concerned, she can have only a limited estate and that she cannot have any right over the property by inheritance and partition. Now, Sir, I do not want to go into any historical or psychological explanations of it but you can well understand what must have happened. I was in England in 1912. The suffragette movement was at its height. Just as in the old days before the Married Women's Property Act was passed, one can presume that the minds of the English judges were influenced, not consciously but sub-consciously by the law existing in England. The suffragette movement was at its height and I know many intelligent men, including some of my own learned professors were against giving any vote to the suffragist. Now it seems to me to be a very curious coincidence . . . . .

**Mr. Lalchand Navalrai:** On a point of order. My friend was a member of the Select Committee and he has signed the Select Committee report and there he has agreed that women will have a limited interest. How can he now go back upon it?

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair is not sure that he wishes to go back upon the opinion he has given in the Select Committee. If he does that, then the point of order that has been raised will be considered.

**Dr. G. V. Deshmukh:** To allay any kind of apprehension or misapprehension, I might declare at once that I am not at all disappointed with the Select Committee's report. I wholeheartedly support the report of the Select Committee. On the other hand, I want to meet objections from different parties not only in this House but the objections which are likely to be raised outside this House also, so that the path of the Select Committee's report may be smooth and neither my friends, the representatives of the Government, such as, Sir Nripendra Sircar and Sir Frank Noyce, who have signed the report, nor any of the Members including Sir Muhammad Yakub could be charged outside that they were going beyond the Hindu law. My point is this: that the Hindu law gave very much larger share of the property to Hindu women and widows than what we are giving now. Incidentally, when I am pleading the cause of Hindu widows, I have to bring in the rights of Hindu women as they were and as they have been curtailed. I hope you will agree with me that this is only an integral part of the argument and no sensible man need object to it.

**Mr. Lalchand Navalrai:** May I refer the Chair to what has been said in the report of the Select Committee? They say:

"We have not accepted the provision contained in clause 6 of the Bill as introduced giving an absolute interest in inherited property to the widow but have made that interest the limited interest known as a woman's estate."

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is not arguing against what was agreed upon in the Select Committee. That is what the Chair understands.

**Dr. G. V. Deshmukh:** In order that I may not be interrupted again, may I explain the main point of my argument to Mr. Lalchand Navalrai.

**Mr. Lalchand Navalrai:** I have fully understood you. You need not waste time on explanations.

**Dr. G. V. Deshmukh:** My friend knows that I am not the person to waste time. If I could, I would be more than satisfied by simply saying that "I move this" and by sitting down but since the question has been raised by my Honourable friend, Mr. Lalchand Navalrai, I must say that all this is absolutely relevant to the question at issue. Sir, there is one thing more. I know that my friends who belong to the legal profession and also those who think that they know Hinduism, not having sufficient time or the other necessities required, for a study of Hinduism . .

**Mr. Lalchand Navalrai:** We now know that you are the only Hindu in India!

**Dr. G. V. Deshmukh:** I am glad you know that; when this Bill passes, that will also be proved.

**Sardar Sant Singh** (West Punjab: Sikh): Sir, I protest against the Honourable Member's statement that the entire legal profession is like that, as he has described it . . . . .

**Dr. G. V. Deshmukh:** I said all those who have not got the necessary time . . . . .

**Mr. Lalchand Navalrai:** A doctor is speaking on law!

**Dr. G. V. Deshmukh:** Why not?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member may resume his speech after lunch.

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

---

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

---

**Dr. G. V. Deshmukh:** Mr. Deputy President, I drew attention of the House to the elements which have been consciously or unconsciously introduced—I would say unconsciously—into the Hindu law by the

[Dr. G. V. Deshmukh.]

European Judges, the Judges of the Privy Council, and I admit that under the circumstances it was inevitable. Sir, I have mentioned four things already, namely, the rights of reversioners, the legal interests, the survivorship and the married women's property and to make the list complete one might as well mention the idea of a limited estate such as exists in England and which unconsciously has crept into the Hindu law as well. A limited estate in England means a certain line of succession and alienability provided that the owner can sell it or it can descend in a certain line. This idea, again, is foreign to Hindu law, but I want to draw the attention of the House to this for this reason that it is on account of these settled ideas of English jurists that the widows' estate or women's estate has been curtailed down and that the Hindu idea about the absolute estate had to be modified and changed. Therefore, nearly every estate has been called a limited estate.

**Babu Baijnath Bajoria** (Marwari Association : Indian Commerce): Limited Companies!

**Dr. G. V. Deshmukh:** Your mind will always work on company lines because you cannot think of anything except of profits. As I was saying, these are the ideas which have been brought into Hindu law and therefore men of the present generation, without knowing anything about it, take this as a pure Hindu law and when attempts are made to replace this by the real principles of Hindu law, a tremendous noise is made all over the country. Now, compare with this the real Hindu law and I am now referring particularly to the Mitakshara law by which four-fifths of India is governed and under which a widow's plight is very much worse on account of the mere maintenance and harassment and trouble with coparceners, the loss of status, bereavement and so on. Well, Sir, all these five things that I have mentioned and which are prominently taken as a chief feature of the Hindu law, such as, the survivorship and other interests, are not to be found in the Hindu law. You cannot find them in Mitakshara who was evidently a great reformist. I do not mean to say that he started innovations but he certainly tried to put the Hindu woman in the position which she occupied before this degeneration set in. Mitakshara does not make any difference between male and female heirs. All these distinctions are of subsequent growth. This idea of survivorship, as I have already informed the House, does not find place in Mitakshara. By that time evidently, degeneration must have crept in and we had the idea of cheating women out of their rights by the very specious argument that they are incapable of performing religious services and therefore they should not have the wealth, the chief purpose of the wealth being the performance of religious sacrifices. Now, I take it that nobody, not even the most orthodox Hindu, will maintain at this time of the day that the idea of wealth is the performance of sacrifices. The Hindu multi-millionaires are not performing any sacrifices and on that ground, I suppose, none of these multi-millionaires, some of whom I see in the House, will be entitled to own any property. Indeed, it was Mitakshara himself who said that wealth is not only for sacrifices but wealth is also given for worldly enjoyments. Therefore, the idea of these religious sacrifices was exploded by this great law giver. Similarly, the phrase 'in lieu of something or the



other' seems to have crept in Hindu law to degenerate it thoroughly. To give an example, the daughter was given a quarter share and afterwards this quarter share was modified to 'in lieu of marriage or something' and then it was changed to 'only marriage expenses should be paid'. Therefore, the right of the daughter to share one-quarter was taken away under this pretext. Now, Sir, this 'in lieu of maintenance' is very much to the fore in connection with widows. There is not the least doubt, as I will show presently, that the old law givers gave the right of co-ownership to the wife, the right of co-ownership gave them the right of a share, but we find that all the legal learned men expounding that this share is not really a regular share, but it is given in lieu of maintenance. This was the first degeneration that came in. This substituting 'in lieu of maintenance' was the prelude to the pretext to deprive the woman of her right. Once this lieu of maintenance came in and her legitimate right to a share was taken off, then naturally you can imagine how the degeneration set in. Then the maintenance could be curtailed because after all what did a Hindu widow want? A Hindu widow had to lead an ascetic life. The funny part—I would not say funny—is this that even to this day a Hindu widow is supposed to lead an ascetic life. I can understand in the olden days, according to Hinduism when a man has reached the age of 45, or when he has grand-children playing on his knees, he compulsorily went into the forest, he led the life of a Vanaprastha, he renounced everything worldly and then went into the forest. I have nothing but admiration for a system like that. At that time if it was enforced, or if it was thought that a widow should lead an ascetic life, it was quite reasonable. But, Sir, in these days what do we find? Do you find here a gentleman like me or my Honourable friend, Mr. Lalchand Navalrai, or others going into Vanaprastha because we have reached the age of 45? Do we lead an ascetic life? We want all the luxuries, we want all the comforts that life can afford and to say that even in these days women shall lead an ascetic life because she is a widow seems to me to be most inhuman. Whatever rights we have, the right to comforts, the right to luxury, let there be equal rights. If there is deprivation for men, then there could be deprivation for women. I can thoroughly understand that. I can sympathise with it. I can be reconciled to that. But to say that so far as men are concerned, they can be old, they can be decrepit and yet they will continue in all the worldly luxuries, but that when it comes to a Hindu widow, 'no, she must lead an ascetic life, she must efface herself, she must forego all her necessities, even if she happens to be the wife of a multi-millionaire'; well, Sir, I cannot understand this logic. There are cases where widows have been granted Rs. 80 a month as maintenance even though they happen to be the widows of multi-millionaires. No doubt Bombay High Court has been more liberal. The Judges have been more liberal in Bombay.

**Mr. Lalchand Navalrai:** Then you have no quarrel.

**Dr. G. V. Deshmukh:** You are leaving it to the personal factor. A Judge may be liberal or may be narrow-minded. Then what happens. I want to ensure it by law. At any rate if the Hindu society has any respect for their women, their rights ought to be ensured by law and should not be left dependent on the personal whims of Judges or Sub-Judges.

**Babu Baijnath Bajoria:** Are you leading the life of a Vanaprastha?

**Dr. G. V. Deshmukh:** I am not leading at the present time. Nor are you leading. You will find that the great law giver Mitakshara never made any difference between female heirs and male heirs. His principle of succession and inheritance was consanguinity, relationship by particles of blood. It was not that the wife, the daughter and the widow should be kept far apart and that the ninth or the tenth son or the tenth cousin because he happens to be an agnate, because he happens to be descended from the male line, should succeed before his own daughter and his wife. He was much too human for that. He put down the line of succession on the natural lines and what is more, where a woman had no issue, then the widow's succession came immediately, but of course, it was qualified further on on the text of Yagnyavalka who made the widow as the immediate successor and heir of the person who died sonless and who left property. The great Yagnyavalka has already seen to it that the women's rights were restored. If a stand is taken today on the line that is found in Manusmriti that a woman does not deserve independence, that a father protects her in childhood—nearly every Hindu knows this text of Manu—that a husband protects her when she is young and in her old age the son should protect her, and, therefore, woman does not deserve independence.

**Babu Baljnath Bajoria:** You do not agree with this text.

**Dr. G. V. Deshmukh:** I do not. I will presently say why. If that is the principle that because a woman is to be protected, she does not deserve independence, and because she does not deserve independence, therefore, she shall not be given any right of property, if that is the line of argument that is to be followed, then what is going to happen to Indians, to Hindus in particular? We have not got independence for the last 1,000 years. We have been under the heel of the foreigner for the last one thousand years and yet nobody denies that we can own property. If that is the argument, that because you have not got independence, therefore, you cannot have property, very well, then no Hindu should have the right to own any property at all.

**Sir Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): I am in need of that property.

**Dr. G. V. Deshmukh:** You can have it. This is the text that was relied upon. Not that Hinduism did not contain very beautiful and generous texts. There are the texts of Brahmaspathi, Parasara, the texts of other law givers who expressly say that by marriage, by sacrament, a wife becomes half of her husband. Therefore, while the wife is living how can anybody else take the property. This was put on a legal basis by the great Yagnyavalka who said that a widow shall inherit after the husband. This dictum that the widow shall come after the husband was certainly qualified to the extent that it was supposed to be applied to the divided property. But Jimutavahana in his Dayabhaga, what did he do? He took the stand on the Yagnyavalka texts that a widow will succeed the husband and he said that there is no express text whether the family shall be divided or undivided, and that she has an equal right irrespective of the fact that the family is divided or undivided. It is the Dayabhaga law of Jimutavahana that is followed in Bengal and I take it that the population of Bengal will not miss Heaven because they are not following

Mitakshara, or because they are following it with a certain amount of modification which I take it is an improvement, they will, therefore, miss Heaven. Therefore, Jimutavahana laid down that the widow succeeds. The only difference between the two being that whereas Mitakshara says that she can inherit only in a divided family, Jimutavahana put it that she can inherit in an undivided family. Now, Sir, it was not Jimutavahana who was alone in this. I see my Honourable friend, Mr. Lalchand Navalrai smiling. Perhaps he is smiling at himself. I know that it was. . . .

**Mr. Lalchand Navalrai:** I am smiling at yourself.

**Dr. G. V. Deshmukh:** I know that it was Jimutavahana who said that there was no text to be applied or that there was any difference whether the family was divided or undivided and that the widow's rights to partition and to a share was absolutely according to the Hindu law. Well, Sir, I do not want to go into all the details, because I see the House is in favour of the Bill irrespective of what few amendments here and there may be coming in.

**Mr. Lalchand Navalrai:** Which you will accept?

**Dr. G. V. Deshmukh:** No, I will see the amendments. Sir, the right in Hinduism of a wife when she becomes a widow to get a share is incontestable. It is as old as Hinduism itself, because if it were not so, how can you explain the meaning of the word "patni"? What is the meaning of the word "Dampatya"? "Dampatya" means unity of possession, that the wealth is between husband and wife. The husband could not without her consent make any presents even to God, because she was the co-owner of the property. From this position of co-ownership, she was degraded. It went to sub-ownership and then from sub-ownership she has been reduced to a state of maintenance and residence. This has been the degradation that had set in and this is the law, the Hindu law, into which all these non-Hindu and foreign considerations crept in. This is the law under which we live today, and yet we think that we are being governed by the Hindu law. Sir, a great deal is made of the joint Hindu family. Whenever any reform is suggested, immediately the joint Hindu family is trotted out and it is said that it is against the joint Hindu family. I earnestly want to ask every Hindu who can think out for himself, is he really living under the joint Hindu family today? I am not talking about the divided or separate family. What we are really living under is coparcenary family.

**Sardar Sant Singh:** No.

**Dr. G. V. Deshmukh:** Do you think we are living under the joint Hindu family?

**Sardar Sant Singh:** No.

**Dr. G. V. Deshmukh:** We are not.

**Babu Bhatnath Bajoria:** What is your idea of a joint Hindu family?

**Dr. G. V. Deshmukh:** I will answer that question as briefly as I can. Sir, the joint Hindu family does not exist. What is really existing is this co-parcenary family which is purely a creation of the law. What is a joint Hindu family? The great law-giver Manu himself divided his property amongst his sons. That shows what regard the great Manu himself had for the joint Hindu family, because if he had it he would not have divided the property himself. If it is supposed that under the joint Hindu family women cannot inherit, then I will quote the instance of the great Yajnyavalka, the greatest sage that Hinduism has produced, whose philosophy has perhaps circulated the name of India all over the world better than any person, the great author of the Brihadaranyaka Upanishad. What does he do? When the time comes for his going to forest he takes his property and divides it between his two wives Gargi and Maitreyi. In the face of all this, when Hindus of these generations say that women do not deserve a share and can only have maintenance, when your own law-givers have given such examples and have actually divided their property among their wives, it seems to me that the Hindus are hugging something as Hinduism which is certainly not Hinduism. It is true there are statements like that of the sage Bodhayana who says that women have no strength and, therefore, they do not deserve any property. But what is the argument about this, and where will it lead to? If my friend, Mr. Bajoria, meets a burly Pathan who is stronger than he is, it would be equally reasonable to say that one who has no strength to keep his property has no right to get it. Besides when was this statement made that, as women have no strength, they should not inherit or should not have a share? I wish to point out that it was said at an orgy of drinking. That quotation is in Taittiriya Samhita, when the soma was sucked by all these ancients, and in the drunken orgy he happened to say that because women have no strength therefore no *daya* should be given. But I am very doubtful whether that *daya* means inheritance or property. As a matter of fact since then both ancient and modern scholars have repeatedly pointed out that this *daya* does not mean inheritance. It only means a portion of drink. Supposing we moderns were to say that drink should not be given to women because they cannot digest it or they cannot support it, will the future Hindu generations say that because they cannot digest drink they should not be given any property? It is on such flimsy arguments and flimsy texts that the right of women to property has been taken away. Under the influence that has crept from outside which has gradually degenerated and disintegrated Hindu law itself, woman has been deprived of her right of property.

Now, what have the Select Committee done? It is perfectly true that woman in my opinion has not been restored to her original status in Hinduism; but at the same time the Select Committee went very thoroughly into the whole matter. They realised how difficult the whole question was. I admit that so far as material gain is concerned, there has not been much of a gain, in the opinion of social reformers. In the opinion of many who would like to have a reform quickly and in a material way, in consonance with material prosperity at the present time, much perhaps may not be said to have been achieved. But so far as the Select Committee's report is concerned, there is a great moral gain. That is why I said in the earlier part of my speech that I am not disappointed with it. I am reconciled to it; I will support this whole heartedly at the present stage. Sir, the moral gain is this; we

3 P.M.

have restored to a certain extent the widow or woman to her rightful position. To a certain extent we have given her the right of partition which has been given to her by the great Dayabhaga and which was never meant to be taken away from her by the Mitakshara commentators and by the Smritikaras, which was absolutely given to her by Vedic scholars and Vedic jurists. That moral status we have given to the Hindu widow and woman. If she is divided, unfortunately, this division came in, I have not the slightest doubt, to do away with the rights of women. All these different kinds of *stridhan* and different kinds of property came out on account of the logic and ingenuity of the law-givers, which was displayed not for a very noble end. After all I am not inclined to blame them, because where revenue and religion get mixed degeneration always sets in. It is not peculiar to my country only; the same history is present even in the west. Even in the Christian Church, it has not been immune from degeneration wherever religion and revenue have been combined. Therefore, I say that all this logic and all that was displayed under the cloak of religion has nothing but a mean motive of self-gain behind it. All these different gifts,—how the woman receives her presents, whether it is a present, whether she receives as a maiden or as a widow, whether it is given at the time of marriage or at the time of procreation,—any one with a little intelligence can see that all these gifts and these *stridhana* and different types of property that a woman is supposed to have all this could not be that it was for the purpose of increasing the right of woman to inherit property. It can mean one thing and one thing only—the pristine, the original right of woman to hold property in Hinduism in spite of what some Smritikaras—and there are plenty of them, not less than 80 Rishis, I am told, some of them good, some bad, some indifferent, but evidently God was not satisfied by revealing the law only to one Trikalagna—one who sees the past, present and future—but it was necessary that it should be revealed to more than 80 gentlemen who wrote the laws: I have nothing to say about that. But there is an attempt in all these to whittle down the right of woman to a share of the inheritance which she had originally: and in spite of their attempts, evidently her right of co-ownership was so well established in general that with all their attempts they have not been able to get rid of that. All that has been done by judicial decisions is that it has been cut down. What the Select Committee has done is nothing revolutionary. As I say, materially there may not be any gain, but morally we have put the woman on a level of status which can very well compare with her present position. In the case of a separate property, she gets the same right as a son. Nobody can deny that the principle of giving woman a share equal to a son is foreign to Hindu Law. Hindu mothers got a portion equal to the son. Hindu wives got a property equal to a son on supercession when the husband took it into his head to marry some one else: it is true that meanness has often prevailed and the *stridhan* was deducted, but all the same the principle of giving equal share was already there. In the case of a gentleman who is divided and who dies intestate we have restored her to the same old right of having a share equal to the son. In the case of joint family property we have given her the same interest that she would have had or which her husband would have had: otherwise, she gets an interest equal to a son. I must say that to this extent practically all the members of the Select Committee were unanimous. The plight of the widow in India

[Dr. G. V. Deshmukh.]

has become so obvious and so commonplace that I do not suppose anybody had the heart to oppose it. There is one provision which we have added, and that is her right of partition, that she should have a right of partition. If that right had not been there the Bill was not worth having, because if you give a right, then you must give the power to exercise it when it is necessary; and, therefore, this power of partition has been given to the widow in cases where the coparceners do not treat her with respect and with kindness. It stands to reason that when her property is going to be coparcenary property and she has only an interest, she will not be so foolish as to demand a partition from her coparceners, because her interest is naturally with the joint family. That interest is not there at present with the plague of these reversioners flocking round her. It is not like the present interest, it is an interest which is common to the other members as well as to her. She will fully understand that in any division if she were to ask for a partition she would be put to loss economically. Partition can only come if the coparceners persist in inhuman treatment as they have been accustomed to do at the present time. Therefore, I think that the provision was absolutely necessary. If the coparceners treat her well, there is no reason why she should ask for partition. On the other hand, this right of partition is absolutely necessary . . . .

**Mr. Lalchand Navalrai:** Would you accept an amendment like that?

**Dr. G. V. Deshmukh:** I do not accept any amendments. I am loth to accept any amendments so far as the Select Committee Report is concerned, for this reason. There may be certain amendments which may be more to my liking; and from the original Bill my liking is very well known. But even if any such amendments are going to be proposed I have decided not to accept them for this reason: that we have come to this conclusion not hurriedly, not hastily, but after two days' deliberation; and I may say that all the members of the Committee came unanimously to this conclusion. As regards my friend, Mr. Lalchand Navalrai's minute or note, it is not against the report of the Select Committee, so far as I can see: it only wants the Bill to be made a little clearer; of course with his legal training and with his age, his anxiety for this kind of thing is justified. As regards the note of my friend, Pandit Nilakantha Das, it does a great deal of credit to his heart, and personally I would have liked to have accepted it. But I have made up my mind that the Select Committee's Report and the whole report and nothing but the report should be put before the House at present and accepted because we have come to this after deliberate consideration. We have come to this conclusion after taking the state of affairs in the whole of India, after taking into consideration the different schools of thought in India. What is applicable to Mitakshara will not apply to Dayabhaga, and what is applicable to Dayabhaga will not apply to customary law. Therefore, it seems to me that for the present as a first stage, nothing could be better than the Select Committee's Bill that is offered to the House. I would request the House to accept the report as it is and if I may be permitted to make a request to my friend, Mr. Lalchand Navalrai, and my friend, Mr. Bajoria, whose amendments I see on the paper, after all said and done I do not think that they are so brutal or so inhuman that they do not feel for the

Hindu widow. I will not do them the injustice that their hearts are so hard: they also feel that something must be done. But they are very frightened: they would stand in the same place and yet think they are progressing. That is unfortunate. They want to progress and at the same time they want to stand in the same place. You cannot prepare an omelette without breaking eggs. If you wish to modify something, something old has to go. That is law of evolution. If we persisted in sticking in the water, we would never have been out of the amphibian stage: we would never have come to the bird stage and certainly would never have come to the stage of human beings. That is the law of evolution. When you gain something, you have got to give up something. Fortunately for me or for the Bill, in this there is no change. We are not gaining anything: it is a matter of pure justice: it is a matter of the least you can do for the Hindu widow: and the least is to accept this Bill as it is. I offer it as it is for the acceptance of the House.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): Motion moved:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to Property, as reported by the Select Committee, be taken into consideration."

Does the Honourable Mr. Bajoria wish to move his amendments?

**Babu Baijnath Bajoria**: I don't move my first amendment. Sir, we all know that Dr. Deshmukh is an expert surgeon. He must have performed thousands of operations on individual persons. . . .

**An Honourable Member**: On widows too.

**Another Honourable Member**: But not on reversioners.

**Babu Baijnath Bajoria**: We also know that he is ambitious man. He was not satisfied with performing individual operations on individual persons. He wanted to make mass operations, and for performing mass operations he has selected for his subject as usual the much abused Hindu society, Hindu laws and Hindu religion, like all other reformers of his school of thought. He struck a very novel idea of bisecting tri-secting or vivisectioning the Hindu family, and the Hindu property into as many parts as possible. He wanted these to be vivisected into  $n^{\text{th}}$  term, which my friend, Dr. Ziauddin Ahmad, will be able to explain better with his mathematical knowledge. My friend, Dr. Deshmukh, wanted the property to be divided between mothers, widows, sons, daughters, sisters, etc.,

**Dr. G. V. Deshmukh**: Even for mother you say et cetera?

**Babu Baijnath Bajoria**: That is your opinion. My friend tried his level best to do this kind of vivisection, but unfortunately he found that the Hindu society is made of much sterner stuff than he thought it to be, with the result he saw he could not vivisect it. Therefore, what he did was, being a shrewd man, to agree to vivisect his own Bill. Sir, when the Bill was referred to a Select Committee, the Honourable the

[Babu Baijnath Bajoria.]

Leader of the House made it a condition that it would be applicable only to widows. With the help of the Honourable the Law Member and other Members of the Select Committee, Dr. Deshmukh began to chisel the Bill. They chiselled it so much that they chopped off about 15½ annas out of it, and half an anna remains. . . .

**Mr. N. M. Joshi** (Nominated Non-Official): Why do you grudge that?

**The Honourable Sir Nripendra Sircar** (Law Member): What is the objection?

**Babu Baijnath Bajoria**: I am not at all objecting. I am only pointing out the difference between the original Bill and the Bill that has emerged out of the Select Committee. I am not objecting to the Select Committee's Report at all.

Then, my friend, Dr. Deshmukh, has lavished praise in an abundant measure on the Select Committee, but as a matter of fact the Select Committee has been the murderer of his own Bill, and it is indeed very creditable to the Select Committee that even after chopping off 15½ annas they have kept the Bill still alive. Sir, the entire Bill has been so thoroughly changed that the opinion of the country sought at one time can no longer hold good today. That opinion, of course, was against Dr. Deshmukh's Bill, but the present Bill, as reported by the Select Committee, only wants to give a right of partition to the widow which she has not got at present. I would not grudge that right, provided my amendment or the one put forward by my friend, Mr. Lalchand Navalrai, is acceptable to the House, because, Sir, in my opinion, it is not at all desirable that a Hindu widow should have unfettered right to claim partition of the estate. Generally, Hindu widows, after the death of their husbands, are in the hands of designing persons; they are generally under the thumb of her maternal relations like an uncle or brother rather than under the will of the other coparceners, and very often we have seen that even litigation is started at the instance of these maternal relations. That is a thing which the House should consider seriously so that there may not be unfair partitions of properties. As we all know, the exclusion of a woman from inheritance was not due only because she is of a weaker sex. The law of succession was made, as far as I know—I am not a lawyer,—I am reading from the Government Pleader. Delhi's opinion on the Bill—"Starting from Manu, the law appears to be that the father protects a woman in maidenhood, the husband in youth and the son protects her in old age, the woman is not entitled to independence". It is based on oblations and pindas. A person who is entitled to offer pindas to the departed soul for his benefit and for his spiritual salvation, he alone, according to Hindu Shastras, is eligible for inheriting his property.

My friend, Dr. Deshmukh, said that his Bill had nothing to do with the Hindu law. There I must contradict him. Hindu law is part and parcel of the Hindu religion, and it is not fair on his part to suggest that the Hindu law as at present administered in this country is all



foreign or alien and has been imported from English law or by the English people and that it is repugnant to the laws enacted by Manu, Yajnavalkya and others. Sir, I do not object to his Bill, and I wish him every success in his endeavours.

**An Honourable Member:** Sir, the question be now put.

**The Honourable Sir Nripendra Sircar:** Sir, I would like to say a few words, although it is not possible to contradict all the statements that have been made in support of the Bill that is before the House. We had it from my friend, Mr. Bajoria, that 15½ annas in the Bill had been chopped off and only half an anna remained. Sir, I admit that from the progressive party's point of view this Bill is disappointing, and while the Government must take into consideration various matters like popular opinion, general opposition to the scheme and so on, if I may express my personal opinion, I may say that the Bill does not go far enough; but I do not agree that only half an anna has been retained and that 15½ annas have been taken away. If my friend, Mr. Bajoria, will just pause and think over the matter, he will see that he was wrong in saying that only the right of partition has been given. It has given much more than that. What is the position of a woman in a joint Mitakshara family today? Suppose there is a father and two sons or a mother and two sons. What is the position of the mother? It is a joint family. On the death of the father, the mother is not entitled to a share in the property at all unless the sons choose to have partition. If the sons choose to partition, then, of course, she gets her one-third, but don't we know that in ninety-nine cases out of hundred sons will avoid partition, knowing as they do that they would have to give a share to their mother too. Therefore, the Bill is giving not merely a right of partition, but as a preliminary to that, a right in her to assert that she will get her share irrespective of the wishes of her sons. It is not half an anna. The Mitakshara sons will realise that it is very much more than half an anna, although I agree that the Bill does not go far down. I have no desire to start a discussion on Hindu philosophy, Hindu religion, progress of society and so on. But there are very few among us Hindus who in their cooler moments will not agree that the position of Hindu women for the last few centuries has been a deplorable one, one which we ought to be thoroughly ashamed of. If religion stands in the way, let it stand in the way, and let there be no progress. But let it not be said by anybody that that is a position which can be justified by reason. My Honourable friend, Mr. Bajoria, prefaced his observations with the remark that he was not a lawyer, and I thought that he ought to have stopped there, but he proceeded to say what were the reasons why women had been excluded. I will not take up much time of the House, but I can assure him, and I shall give him some extracts to show that he is wrong when he says that Hindu law is part of Hindu religion and that Hindu law requires the treatment which the Hindu woman is getting today. But what is Hindu law? How are we to find Hindu law? Has Hindu law been the same, and are there not twelve commentators giving twelve different versions on acknowledged texts? Dr. Deshmukh was perfectly right in saying that the position of Hindu women has deteriorated with the position of Hindu men. As Hindu men decayed and became slaves the only slaves they could think of were their womenkind. My Honourable friend, Mr. Bajoria, if I say what is his Hindu law,—

[Sir Nripendra Sircar.]

he will say, it is the Mitakshara Law. Very well, I shall not detain the House very long, but may I give him some quotations from Mr. Dwarkanath Mitter's "Position of Women in Hindu Law". Let us see what is the position of the Hindu woman under the Mitakshara and how she came to lose it. I shall try to be very brief, but this slogan has been repeated so often that our religion is in danger and such and such is Hindu religion that, although the House is not very full, I think the matter is of sufficient importance not to be brushed aside. I read from page 525 of Mr. Justice Mitter's book.

"We now proceed to consider the nature and extent of the rights of women over inherited property. The texts of Yajnavalkya and Vishnu under which the widow, the daughter, the mother and other females are recognized as heirs do not seem to make any distinction between the estate taken by them and the estate taken by male heirs who take under the same texts."

May I ask, is this Hindu law? Cannot Yajnavalkya and Vishnu be regarded to know as much Hindu law as my Honourable friend, Mr. Bajoria? Are we really breaking the Hindu law if we suggest that the Hindu woman should be given the right to which she undoubtedly is entitled under the older texts?

**Babu Baijnath Bajoria:** I never said that the Bill as it is before the House is against religion, and I did not oppose it too.

**The Honourable Sir Nripendra Sircar:** Again,

"If the male heirs took an absolute estate, it would seem to follow that women would do the same."

As my Honourable friend is conceding that what we are doing is not opposed to Hindu law I will just tell him that if he will read the next few passages it is stated in the most explicit language that she takes an absolute estate under the Mitakshara. How did she come to lose it? A solitary text was found of some other author which has been ignored by Mitakshara itself, and in that text it is said that women are in a state of dependence, therefore, they ought not to take property. As Mr. Justice Mitter points out, the whole point has been missed. When the author was talking of dependence, he was talking of their social position, of their personal status, and not referring to property at all. And yet in the face,—as I have the authority of Mr. Justice Mitter, otherwise I would not possibly have ventured to make these statements—in the face of the clear statement in the Mitakshara itself, we have a decision of the Judicial Committee that the woman cannot inherit because she is in a state of dependence. I will not go into the matter any further, but I do suggest to Dr. Deshmukh that, although I can quite sympathise with him that he has not obtained as much as he wanted, he will not, on the other hand, whittle down or belittle what he has got, because, after all, when he will come to think of it, we are concerned with Hindu women, first of all the wife and the daughter. I remind the House again that the married condition is the normal condition at some time or other of the Hindu woman. If you are providing for the wife you are providing for the daughter, no doubt,

not in the father's family, but in the family where she will be married. I admit that having regard to opposition of large section of the Hindu community justice is not being done to the daughter. Even if the daughter is not given as much as a son, her position ought to be improved. I do submit to the House as an initial measure for restoring the wrong which has been done to women, and as recognition of this injustice, the present measure is a substantial measure, although I admit it falls short of what possibly others may think, ought to be given to her son, I support the motion. (Applause.)

**Mr. Lalchand Navarai:** I was, on this Bill, a party to the Select Committee. The question was considered from all points of view; there were certain things that required to be cleared up, and also certain restrictions had to be put upon what the Select Committee decided. I thought that after the Select Committee had decided this question Dr. Deshmukh had no cause at all to get excited or claim that he was the only Hindu, ignoring others here who helped him in getting this Bill very soon through the Select Committee. Dr. Deshmukh thinks that he is the only sympathetic man for the cause of these widows. Whether he is a real Hindu or whether he is very sympathetic to women is a question which I leave to the Bombay people to decide. It is not for me to say because I have not lived with him, but I do say that as a doctor he cannot pretend to say that the lawyers do not know the law or pose to know the ancient Hindu law so much more than other people in Bombay or elsewhere. This is, however, by the way. What I wished to say was that the matter had become simple. He was a party to the Select Committee's decision and therefore he should have quietly come here and said, here is the Select Committee's report, I accept and I request the House to accept it. But he did not take that course. Probably the excessive enthusiasm that he has on this question has led him astray. Sir, coming to the Select Committee's Report, it will be observed that the widow in a separated family has been given her share and her right of partition. As you all know, at present the Hindu law allows a share to the widow in a separated family, though she has no right to claim partition, but at a time when it is felt that even the male members do not wish that their commensality should go on and any one of the joint family male members asks for partition, then only she shall also have a separate share. This is the law at present. Now, that law has been amended by the Select Committee giving her a choice of demanding a partition. My friend claims that a widow is very wise, is very thrifty and she can see through as any educated man, but does he not know that educated women are very few in India, yet, and, therefore, he should proceed rather cautiously, to see that in his enthusiasm he does not bring about dissensions in families which live in peace. This Bill gives a right of partition simply by asking for it. It would be thus assumed that the sons and the mother do not agree. In such a case, she can always ask for a share but the question of a joint family is absolutely different. In the joint family we have brothers, we have sons, and there are ladies in the house. The ladies are given maintenance and if there is any disagreement amongst the family, even one of the sons could ask for partition and it would be made but if the mother is on good terms with her son then she will be all the same given maintenance. This Bill however tries to give her a right of partition. I want two changes for which I have put in amendments. I want, firstly

[Mr. Lalchand Navalrai.]

that the joint family property should not be wasted by the widow. Secondly, I want that the partition should not be given to her without any restriction. There ought to be some restriction of even a simpler kind. Otherwise, we know how these widows are inspired by some people. They are misled into asking for partition and thus wasting the money. I will give you an actual instance. A person left a property of Rs. 6,000 and he left a widow only as his heir. When the 6,000 rupees came into her hands, men like eagles and vultures began to hover round her. They said: "Well, you have got no son. You must do something for your husband's soul's welfare". She asks: "What should I do?" They say: "Well, it would be better if out of this Rs. 6,000 you spend 2,000 for digging a well." According to the old ideas, digging a well is just like adopting a son and when people come there to take water it is charity. So she gave Rs. 2,000 outright but after a year or so, she had not in her possession even Rs. 600 and she had to go back to the cousins and uncles of the deceased for help. I am not against giving her a share by partition but there should be some restriction. With regard to that I have put in certain amendments. My friend, Dr. Deshmukh, said that she should have partition when it is necessary. I have noted these words. If he agrees to that, then that would mean some restriction in order to see whether there is that necessity for partition or the family has really come to a stage, where there is no commensality.

**The Honourable Sir Nripendra Sircar:** He may agree, but there are other parties.

**Mr. Lalchand Navalrai:** I am appealing to you also. I know that without the help of the Treasury Bench and especially of the Law Member, we can get nothing. What I submit is that I have put in amendments, and when I move them, it will be clear to the House that I am not against the widow's interest. Now a family generally consists of members, say three or four sons of the deceased and some uncles. All of them could not be against the widow unless she has gone astray, and her conduct is not approved of by the members of the family, in which case she does not deserve a share of the property. This system of commensality in the Hindu joint family or the coparcenery, as my friend calls it, has existed since long. It is true that times have changed but we are also moving with the times. Otherwise I would not have been a party to the Select Committee's conclusions. But this is a stage at which we should not do too much. If you give a blank cheque to a widow, there may arise many cases of spoliation of the property. I would therefore request the Honourable the Law Member to reconsider the position and when I move my amendments to be good enough to yield as much as possible.

**Mr. N. M. Joshi:** I shall not detain the House for more than a few minutes. I feel that I must express my sense of keen disappointment at the whittling down of the original Bill of my Honourable friend, Dr. Deshmukh, for restoring the Hindu woman to her full rights. I admit that Dr. Deshmukh was very wise in accepting the report of the Select Committee. When we want reform, we must be prepared to accept whatever reform is practicable at a particular moment. At the same time, I feel that the Government of India should have shown themselves more progressive than they actually did.

**The Honourable Sir Nripendra Sircar:** They would have, if the people themselves would have been more progressive.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

**Mr. N. M. Joshi:** I am glad that even the Honourable the Leader of the House said that he himself was somewhat disappointed. If the Honourable the Leader of the House was in favour of a little better measure of justice being given to the Hindu woman, I do not know why the Government of India should not have shown a little more progressive spirit than what the Honourable the Leader of the House was himself prepared to show. I feel that the Government of India have taken upon themselves an unnecessary responsibility in whittling down the provisions of the Bill. I am glad to hear that the Government of India would have shown a more progressive spirit if the public opinion had supported them. But how do the Government of India know that the public opinion in India would not have supported them? I know something about public opinion in this country; I can feel the pulse of public opinion in this country, and I have absolutely no doubt in my mind that public opinion as a whole, the public opinion of the mass of people in this country will support the doing of justice to Indian womanhood in the matter of the holding of property and of the rights of inheritance. It is true there are some people who are orthodox and reactionaries, and the unfortunate thing is that some of them are educated. It is these people who sometimes talk of the protection of Hindu religion, the protection of Hindu customs and traditions, but their number in India is very small. They call themselves Sanatanists and protectors of Hindu religion but as a matter of fact they are doing the greatest harm to Hindu religion by allowing most unjust and harmful customs and laws to remain in Hindu society. They have very little influence in the country, and absolutely no influence with the mass of the people; being very orthodox and Sanatanists, they not only do not recognise the rights of women but they do not recognise the rights of the masses of people in this country (*Voices*: "Question"). Sir, the present elections which are being held will show clearly that people who call themselves Sanatanists or orthodox have absolutely no influence in Hindu society. The elections are bound to show this and if the Government of India would try to feel the pulse of Hindu society rightly, I have no doubt they will come to the conclusion that they will receive the support of Hindu society to a much larger extent for their progressive measures. I hope the Government of India will consider this matter; and when a Member like my Honourable friend, Dr. Deshmukh, brings forward another measure—and I hope he will remain in this Assembly for a much longer time and will not fail to bring another measure of a larger scope in the near future—I hope he will receive the support of the Government of India. Before I sit down, I congratulate my Honourable friend, Dr. Deshmukh, for having brought forward this Bill and for also having secured the support of the Government of India although that support is to a very limited extent. I hope, Sir, that the Bill will become law without much loss of time.

**Mr. President** (The Honourable Sir Abdur Rahim): Does the Honourable Member, Dr. Deshmukh, wish to reply?

**Dr. G. V. Deshmukh:** No, Sir; I do not want to take the time of the House further.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to Property, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That clause 3 stand part of the Bill."

**Mr. Lalchand Navalrai**: Sir, I move:

"That to sub-clause (2) of clause 3 of the Bill, the words 'along with other coparceners entitled to the same interest' be added at the end."

Sir, if the House permits me, and if my Honourable friend, the Mover, and the Honourable the Law Member agree, then I would change the word 'coparceners' into 'sons' . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Is there any objection?

**The Honourable Sir Nripendra Sircar**: I do not object to the change of word, but I would object to the substance of the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): This is an amendment of substance; if there is any objection, the Chair cannot allow it.

**Dr. G. V. Deshmukh**: Sir, I do not accept the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair cannot allow it.

**Mr. Lalchand Navalrai**: Sir, I only wanted to make it a little more clear. I have explained the object of this amendment in a note which I appended to the Select Committee's report. In case clause 3 (2) is maintained, it requires clearing up. A provision that a widow shall have, on the death of her husband, in the joint family property, the same interest which her husband had is liable to be misconstrued to mean that she gets all the interest exclusively to herself; that is not the intention of the Select Committee.

**The Honourable Sir Nripendra Sircar**: That is the intention.

**Mr. Lalchand Navalrai**: And, therefore, the words "along with other coparceners entitled to the same interest" should be added. Now, you will find that in clause 3, sub-clause (1), it is said that on the death of the husband who had separate property his share will not exclusively descend to the widow, but if she has two sons, then she takes only one-third. To make this clear the words—"along with his lineal descendants" were considered necessary to be added for if these words "along with his lineal descendants" had not put it would have meant that the whole interest of

the husband should go to the widow. That would be absurd, because at present also, if the property is divided she gets only a share, along with the sons. In sub-clause 1 of clause 8. It had at first prescribed that the interest of the deceased husband should devolve upon the widow. That would mean all the interests that he had. It was subsequently considered that by that phraseology she will get the whole and the sons will get nothing and that would be against all canons of justice. Therefore, the above words were added. Now, such words I want to be included in the event of the devolution of the joint family property. I will explain what I mean by giving an illustration. In a joint Hindu family consisting of three brothers, A, B and C, if they divide the property amongst themselves, A would get one-third of it as his share. Now, on his death he having left one widow and two sons, as his heirs, will this one-third devolve wholly on the widow or upon the sons also? If the answer is that it will devolve upon the widow as well as the sons, then the widow gets only a share of the one-third and the rest goes to the sons. That is the present Hindu law. But if there were three brothers, A, B and C and also three sons of A to divide his property, then the property will not be divided into six shares but it will be divided into three shares and the sons of A will get their shares through their father from his one-third of the property. The difficulty will arise only if you give the whole one-third share of A to the widow, leaving the sons getting nothing. If the intention is that the sons should get nothing, let the Honourable Member make the statement to that effect that it is intended by this Bill that the sons should get absolutely nothing and that the widow should get the whole property. If, however, this is not the intention, the position should be made clear. Otherwise the widow will come forward and I say: "No matter whether my sons get the share or not, I must have the whole of my husband's property". I would like to know from the Honourable the Law Member in plain terms the answer to this plain question whether in a case like this where there are three brothers and one of them dies leaving his one-third share, the other one-third having gone to B and the remaining one-third to C what will happen to the one-third of A? Will the whole of it go to the widow? If yes, then nothing will be left for his sons to take. Therefore, I submit that the position should be made clear otherwise legal difficulties will arise under the Hindu law in actual practice.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to sub-clause (2) of clause 3 of the Bill, the words 'along with other coparceners entitled to the same interest' be added at the end."

**The Honourable Sir Nripendra Sircar**: Sir, if the House is willing to accept this amendment, then it would mean that the share of the property that the widow is getting will be whittled down again very substantially. I have great respect for my Honourable friend but I am afraid there is some confusion in his mind when he says that the Select Committee wanted what he is now moving. We are likely to confuse if we take complicated illustrations, but may I take a simple case of a man with two sons and a wife under the Mitakshara law. Now, what are the shares of the two sons and the wife when the father is alive. In one sense in the case of a Mitakshara family, no one has a definite share in any specific property. I need not go to old cases to prove this. Supposing at any time either the father or the two sons simply said or wrote a letter that from today they

[Sir Nripendra Sircar.]

want their interests to be severed, there will be no partition but severance is effected. They can go on living in the same old house but from that very moment the father and the sons in the Mitakshara family will get one-third share each. I stop there for one moment. If this happens in the life-time of the father, he says: "My good boys, I do not want survivorship: let us have severance of interest though not partition". If he dies the next day, what happens? The widow gets one-third because that was the separate property of the father. Now, if my Honourable friend's amendment is accepted, the position will be like this. A has left his property which is one-third. Now, divide that one-third between B and C and the widow. That is to say, give the widow the one-ninth. Is not that what he is after? It is not a quarrel about words but we differ in substance. When my friend says that the sons are excluded, it is a fallacy. They are not excluded at all. Just as under the Hindu law, the wife is treated as a continuation of the husband and the widow is getting what her husband would have got if he had been alive and if at any point of time he had said: "From today my interests are severed". As my Honourable friend knows perfectly well, it is a very simple process. Any of the coparceners has got the right to say: "From today I do not want these coparcenary rights". That is enough. It need not have the consensus of the three and it need not be done by performing any ceremony or by writing a document or things of that kind. Even a word of mouth is enough. Even a declaration by any member of the joint family is enough to sever their interests, although the properties remain unpartitioned. On what principle is my friend suggesting that in this very simple case that I have given the widow should get one-ninth and not one-third?

**Mr. Lalchand Navalrai:** I did not mean to say that at all. What I said was that the man possessed one-third share and that one-third had to be divided between A, B his sons and his widow. A getting one share, the other son another one share and the widow one-third share.

**The Honourable Sir Nripendra Sircar:** If my friend will allow me, I would like to ask him to take a very simple case of father A and two sons B and C. The father dies, does he want the widow to get one-third or one-ninth?

**Mr. Lalchand Navalrai:** One-third.

**The Honourable Sir Nripendra Sircar:** But that intention will be frustrated if we accept the amendment. I will read out sub-clause (2) of clause 3. It reads:

"When a Hindu governed by any school of Hindu Law other than Dayabhag school or by customary law dies intestate having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had."

Now what was the interest which A had?

**Mr. Lalchand Navalrai:** One share.

**The Honourable Sir Nripendra Sircar:** I am putting the question to myself and wish to answer it without your help.



**Mr. Lalchand Navalrai:** I am sorry.

**The Honourable Sir Nripendra Sircar:** Of the three what is the interest which he had. Surely he had one-third interest and 4 P.M. that one-third interest is now coming to the widow. This is how this clause reads. Let us see if the addition is made in the hope of making it clear which it clearly cuts down the right of the widow, let us see how the clause reads:

"... the same interest as he himself had along with other coparceners entitled to the same interest."

That is to say the interest which 'A' had, that will be inherited by the widow along with the other coparceners and therefore it amounts to one-ninth.

**Mr. Lalchand Navalrai:** It does not amount to one-ninth; it amounts to one-third.

**The Honourable Sir Nripendra Sircar:** If my Honourable friend's idea is that the widow will get one-third and not one-ninth I think he can have no fear that the widow will not get one-third, because the language is:

"have in the property the same interest as he himself had",

that is to say, which the husband had. I hope my Honourable friend will not make it clear as mud by adding these words. I strongly oppose the amendment.

**Mr. Lalchand Navalrai:** Even mud sometimes helps the Courts.

**Dr. G. V. Deshmukh:** As a layman, I think the idea which my Honourable friend, Mr. Lalchand Navalrai, has in his mind is better carried out by the Select Committee report than the amendment that he suggests.

**Mr. Lalchand Navalrai:** It may be, but I want to make it clear.

**Dr. G. V. Deshmukh:** Therefore, I recommend that the amendment should be rejected and the report of the Select Committee accepted.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That to sub-clause (2) of clause 3 of the Bill, the words 'along with other coparceners entitled to the same interest' be added at the end."

The motion was negatived.

**Mr. Lalchand Navalrai:** Sir, I do not move amendment No. 8.\*

I move amendment No. 4. I beg to move:

"That to sub-clause (3) of clause 3 of the Bill the words 'if any one of the coparceners agrees' be added at the end."

---

\*That to sub-clause (3) of clause 3 of the Bill the words 'if the majority of the coparceners agrees' be added at the end."

[Mr. Lalchand Navalrai.]

Now, sub-clause (3) of clause 3 reads:

"Any interest devolving on a Hindu widow . . . ."

She has been given the right of partition un-restricted and that is what I said at the very beginning, that when you are giving her the right of partition, for the first time there ought to be some restriction. I will not be against partition, if there is dissension in the family or if the other members of the family are harassing the widow or that she is being left without any maintenance or without any proper support. Therefore, I said there must be some safeguard. I only say that if she can bring round or if she can prove the desire on the part of even one of the joint family members to have partition, she shall have the partition. In other words, if she has three sons, and all of them do not want partition, she should not be allowed to enforce the partition against their will. All the three sons are not expected to be fools. I say that she should show that there is discontent for living jointly at least in one or her sons. I, therefore, move this amendment as a measure of protection.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to sub-clause (3) of clause 3 of the Bill the words 'if any one of the coparceners agrees' be added at the end."

**The Honourable Sir Nripendra Sircar**: Sir, this is the second attempt on the part of my Honourable friend to take away by the left hand the very little which has been given by the right. The position is that she will be given the right to ask for partition, but she is not to exercise it unless she can find on her side one coparcener who will say, "I agree there should be partition". What are the grounds? He says, we all know that women are surrounded by vultures. Vultures, I understand, never fly round men. He further says that sons and boys are ideal boys and never waste a pice, on the other hand the wife is a spend-thrift who makes over the whole substance to her beloved.

**Mr. Lalchand Navalrai**: I never say every wife does that.

**The Honourable Sir Nripendra Sircar**: He means most of them. Then my Honourable friend gave a story of how a woman—perhaps he knows the woman—who had Rs. 6,000 was surrounded by vultures in the shape of Brahmans—thank Heavens, I am not a Brahman—she was surrounded by mendicants. She spent Rs. 2,000 in digging a well and next year she had no money. Supposing this has happened, all this has happened without the assistance of Dr. Deshmukh's Bill. What is the point of the argument? If this is happening today, that only shows that whether men or women, they cannot be kept out of the clutches of vultures in the shape of Brahmans or mendicants or in any other shape. But that is no argument when you propose to give a woman the right to ask for partition and yet insist that she must depend upon the good wishes of the coparceners. Is not that the intolerable position today? Take for instance Bengal or take Mitakshara, there are two sons. I can give you not one but dozens of cases where the brothers have fallen out, they are fighting among themselves, but they will not divide the property

because they have got to give a share to the mother. What will happen in such a case. All cases are not cases of ideal boys against a spend-thrift mother. But the case may be of a good mother against two scoundrels of sons. What will happen in that case. The mother says, "will one of you agree to partition the property". The sons will say, "No dear mother, much as we love you, much as we respect you, you can have our affection, but not our property". That is the answer which she will get. I submit this ought to be wholly unacceptable to every part of the House. The idea is that she will have the right to get property and to insist on partition. I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That to sub-clause (3) of clause 3 of the Bill the words 'if any one of the coparceners agrees' be added at the end."

The motion was negatived.

**Babu Baijnath Bajoria**: Sir, I beg to move:

"That to sub-clause (3) of clause 3 of the Bill, the words 'in case of any maltreatment, cruelty or hardship done to her by the other coparceners', be added at the end."

Sir, my intention in moving this amendment is to ensure the interest of the widow as well as the son. What I want is that when a widow is not treated properly if her condition in the family is deplorable, I admit in several cases, it is deplorable, then she shall have the right of partition. But if her sons or the other coparceners treat her well, she should not have that right. She may fall a prey to designing persons who have got an eye on her money as soon as she separates and gets her share partitioned. In order to avoid that sort of thing, I am moving this amendment. In my opinion, if this provision is made, the sons and the other coparceners will treat the widow affectionately, because they will be afraid that if they do not do so she will claim the right of partition as soon as she suffers from any hardship.

**Mr. Akhil Chandra Datta** (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): What do you mean by hardship?

**Babu Baijnath Bajoria**: That will have to be decided by the Courts. She will also feel that she cannot claim partition until and unless she is not treated properly by her sons and other coparceners, and she will not fall a prey to designing persons. It is with that best of intentions that I am moving this amendment.

In this connection, I cannot pass over the remarks that Mr. Joshi made with regard to the Sanatanists his attacks on whom were quite unwarranted and uncalled for. He said that the Sanatanists have no influence and no following in the country. I quite repudiate that. He gave the elections as an indication. But the elections are fought on a political basis in which the Sanatanists do not take much interest. The Congress as a great political organisation fights these elections on political grounds. I daresay, if any question of religion is put to the test, Mr. Joshi's remarks will prove to be untrue. I challenge his remarks and entirely repudiate them.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to sub-clause (3) of clause 3 of the Bill, the words 'in case of any maltreatment, cruelty or hardship done to her by the other coparceners', be added at the end."

**The Honourable Sir Nripendra Sircar:** Sir, my Honourable friend, Mr. Bajoria, has said that he was moving this amendment with the best of intentions. We know exactly what is the place which is paved with the best of intentions. The amendment means this. This unfortunate woman, the husband having died, wants the one-third which is to be given to her by the Bill. What has she got to do? To start with, I believe she must go first of all to the police court and then make out a case of cruelty; or to the civil court, which is still more expensive. She goes to the civil court and the preliminary issue which is tried is, was there any cruelty? Was she subjected to any hardship? The learned Judge proceeds to take evidence,—how the abuse was started, what was the quantum of abuse on each side, how the thing ended, and so on. What is meant by hardship? Sufficient maintenance not having been given. What is sufficient maintenance? I have come across many cases where rich Hindu sons think that a mother could not possibly ask for more than one rupee a day. What does she want money for? She has got to live the life of an ascetic; a cup of milk and a little fried *chana* ought to be quite enough for her. What does she want money for? I submit this is a ridiculous suggestion that before she can enforce her right of partition she should be driven to a suit to prove cruelty and hardship against the sons. Is it for any mother to prove it against the sons? Who will be the witnesses? The servants. Under whose control are they? The sons or the poor widow? I submit, Sir, that my friend should rest content with the best of intentions and withdraw this amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That to sub-clause (3) of clause 3 of the Bill, the words 'in case of any maltreatment, cruelty or hardship done to her by the other coparceners', be added at the end."

The motion was negatived.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**Dr. G. V. Deshmukh:** Sir, I move:

"That the Bill, as amended by the Select Committee, be passed."

**Mr. President** (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill, as amended by the Select Committee, be passed."

**Sir Muhammad Yakub:** Sir, I was one of the members of the Select Committee on this Bill, and I have also signed the report without a minute of dissent and cannot oppose the Bill at this stage. I think the Bill as it has emerged out of the Select Committee is not very satisfactory. In the original Bill, the right of holding property was intended to be given to the widow as well as to the daughter, but in the Select Committee the right of the daughter has been altogether taken away. She has been ignored, although as a matter of fact I think a daughter stands more in need of property and protection than the widow.

**The Honourable Sir Nripendra Sircar:** She gets it as the wife in another family.

**Sir Muhammad Yakub:** If she is unmarried she is not a daughter-in-law of any family, or she is married to a poor man, and still she is not getting anything.

**The Honourable Sir Nripendra Sircar:** My Honourable friend is under a mistake. As regards unmarried daughters, it is a liability of the whole joint family to maintain her and to pay her marriage expenses. The moment she is married she gets her rights not as a daughter of this family but as wife in the other family.

**Sir Muhammad Yakub:** Quite right, but before she is married she is altogether at the mercy of her brothers. It is possible that sons may have love and may have affection for their mother and they may treat the mother well, but they may not have the same affection and consideration for their sisters. Moreover, it is expected that an unmarried girl would be of a tender age and she requires, specially in these days, education and many other things which the girls in bygone days did not require. Therefore, I think that a daughter was more entitled to get a share in the property of her father than a widow. In India, as well as in Arabia, there has always been a great prejudice against daughters. In fact, in Arabia and also in certain very noble and high castes in India, the birth of a daughter was considered as a calamity and if the father could get an opportunity, the poor little girls were slaughtered and killed by fathers. The same feeling still exists in India and from the current of the debate in the House this morning, I find that in spite of the fact that there is lip loyalty towards women—though everybody says that we want to raise the status of women and we want to do this and that for women—I think that the same feeling of distrust and hatred for women still exists in India. Probably, our friends even today want that the widows should commit *suttee* and that the daughters should live like slave girls and dependants of their brothers. Therefore, I think that the House cannot be congratulated for passing the Bill in the form in which they are passing it now. I can still congratulate my people, the Muslims, when I find that even in this year, 1937, women of no religion and no country enjoy the same right of inheritance and the same status which the Muslim women have enjoyed. However, that is quite a different thing. As Dr. Deshmukh said, this is a small mercy which the women of India are getting through this Bill and we hope that this small ray of hope will, in future, give more light to the House: probably our friends, who claim so much respect for their womenfolk, will in future be more generous, and we will find that Dr. Deshmukh's Bill will lead to some more comprehensive measures, and the womanhood of India, some day, will get that right to which they are entitled. With these remarks, I support the passing of the Bill.

**Mr. Huseenbhai Abdullahai Laljee** (Bombay Central Division: Muhammadan Rural): Sir, I support the Bill that has been moved and I consider myself fortunate as I believe we owe a duty towards our mothers. It may be said that I am a Muslim and I may be asked why I consider myself fortunate. I would tell my friends that although I am a Muslim, unfortunately up to now I am in a community which is governed in certain respects under the Hindu law of inheritance and succession. When we were converted to Islam, the religion that we were given was a mixture of Islam and Hinduism. About 36 years ago we have separated and built a mosque, and although we have now adopted all the principles laid down in the *Koran* and *Shariat*, still owing to custom that prevailed with regard to inheritance and succession we are up to now governed by the Hindu law when we do not make a will. According to practice, we do make a will; but if unfortunately we fail to do so, the plight of the widow is as miserable as it can be—just the same as that of a Hindu widow. I can tell you honestly that there have been many instances in our community, which is considered to have adopted the principles of Islam, that as soon as the sons inherit the properties of the father, they forget that it is to their mothers that they owe their coming into the world and they try to maltreat her. It is an acknowledged fact that when the father dies, the mother has to look to her sons—and not only to her sons, but to the wives of her sons for maintenance and protection—such a miserable position! I do hope that this Bill will remove that position. A lot has been said about the position of the woman, and nobody can deny that unless and until this country raises the position and status of its women, we are not going to be considered to be civilised persons, far less are we entitled to demand independence or any such thing. I do believe and strongly believe that if our better halves are not treated equally, as is laid down by all civilised nations, as is laid down by all religions—even in the Hindu religion—I do believe with Dr. Deshmukh that it is due to the lawyers that the present disabilities have come about—I do believe one of the curses that we were suffering from was *suttee* and those who removed *suttee* are enjoying the reward of their meritorious act. Similarly, I do believe that as soon as this acknowledgment of the widow's right is made, a sort of curse will go away from India; and the sooner we do it with regard to the rights of daughters, the better it will be. The Honourable the Leader of the House said that girls as soon as they get married will get their share from their husband's family. How does he say that? The question is whether a girl is going to marry a rich man or a poor man. But surely if she is the daughter of a rich man, why should she not be entitled to have her share, I ask in all fairness? When the father is living he treats all children alike. When he dies, the mother looks like an orphan and the girl cries and considers herself an orphan. Is the very sight of that tolerable? Why should two children of one father and one mother be treated separately? In fact, the father does all he can to educate his children and the mother does all she can to imbibe in them the best of habits and kind of living: and what a misfortune if the father dies? The boys are all right. But the girls although they have imbibed all these good things are helpless creatures. That is what we should put right, and I am very glad that my friend, Sir Muhammad Yakub, has drawn pointed attention to that.

I do not wish to take up the time of the House further; and although my friend, Dr. Deshmukh, is my dear old friend it has never been my

habit to praise him. But as a Member of this Legislature, he has done a duty and I do hope that we all will acknowledge that although he is a doctor and not a lawyer he has seen the equity and worked hard for three or four years and tried to do justice to the mother, for which we are grateful to him; and I do hope this Act of Dr. Deshmukh will be remembered not only in this House but outside as an Act which we badly needed. With these words, I support the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill, as amended by the Select Committee, be passed."

The motion was adopted.

## THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENTS OF SECTIONS 30, 84, 84A AND 85.)

**Sardar Sant Singh** (West Punjab: Sikh): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of sections 30, 84, 84A and 85*) be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Mr. Akhil Chandra Dutt, Mr. Lalchand Navalrai, Mr. Sham Lal, Sir Muhammad Yakub, Mr. M. Ananthasayanam Ayyangar, Mr. Asaf Ali, Dr. DeSouza and the Mover with instructions to report before the 31st March, 1937, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

As Honourable Members will remember, my last motion with regard to this Bill was for circulation. Section 30 of the Criminal Procedure Code reads like this:

"In the territories respectively administered by the Lieutenant Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners the Local Government may notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death."

From the terms of this section, it is clear that the normal course of investing the Magistrates with power is defined in sections preceding this section 30, and the power that is given to a first class Magistrate in all the provinces of India is to sentence a person to a term of not more than two years. The offences under the Indian Penal Code and under local and special laws do contain provisions for inflicting punishment to a higher term than two years. In the case of most provinces, which are not mentioned in section 30, cases which are inflicted with more than two years punishment are tried either by Assistant Sessions Judges or by Sessions Judges, but in the territories mentioned in this section, enhanced powers, as they are called in section 30, are exercised by first class Magistrates specially empowered under this section.

Sir, in the first place, I have a grievance to bring to the notice of the Honourable Members of this House, and I hope Honourable Members of the Treasury Benches will at least, so far as this grievance is concerned,

[Sardar Sant Singh.]

sympathetically hear it. At the same time, Sir, I shall seek your protection too owing to the injustice done to my last motion. This motion was for circulation. Copies of the Bill together with extracts from speeches were sent to various Local Governments in India, but from the opinions received, I find that most of the Local Governments have circulated the Bill as widely as possible and obtained the opinions of District Magistrates, Commissioners, Bar Associations, Public Prosecutors and the others. But from the Punjab, I find, Sir, we have received only two opinions, one is from the Punjab Government itself and the second is from the Honourable Mr. Justice Din Muhammad, a Judge of the Lahore High Court. Evidently the Bill was not circulated in the Punjab at all. I wrote to your office explaining the position, and that letter, I understand, was forwarded to the Punjab Government, and yet my Bill was not circulated by them for eliciting further opinions thereon . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): You mean the Punjab Government did not take the usual step to elicit opinions?

**Sardar Sant Singh:** They did not take the usual step to obtain opinions. That is my information, and I would request the Secretary of the Assembly to inform us whether any reply to my last letter was received at all from the Punjab Government as to why my Bill was not further circulated to elicit opinions from the Bar Associations and other members of the Bench and others . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member knows that this Department send these Bills to various Local Governments to obtain opinions from persons who are competent to express an opinion, and the Chair assumed that in this case too the same procedure was adopted. The Chair understands the Honourable Members complaint is that the Punjab Government have failed to obtain opinions in the usual way. That is a matter which has to be found out . .

(After consulting the Secretary of the Assembly).

The Chair understands what happened was this, that the Punjab Government did send certain opinions which they had collected, and those have been circulated to the Members including Sardar Sant Singh. Then, Sardar Sant Singh wanted that the Punjab Government should also obtain the opinions of the Bar Association of the Punjab, and they have been written to to that effect, but no reply has been received so far.

**Sardar Sant Singh:** Sir, if you will kindly refer to the opinions received from the Punjab Government, you will observe at page 8, 1st column, that the first opinion received is from the Punjab Government itself. Then the second is copy of a letter No. 3818-S. (Judicial), dated the 17th July, 1935, from the Government of the Punjab; third is copy of letter from the Officiating Registrar, High Court of Judicature at Lahore, No. 5321-Genl. IIE-10, dated the 18th June, 1935, and fourth is copy of opinion of the Honourable Mr. Justice Din Muhammad . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Bar Association is not there.



**Sardar Sant Singh:** Not only that the Bar Association is not there, but there is no mention of any Commissioner or Deputy Commissioner or of any Magistrate empowered under this section 80, nor of any of the Bar Associations in the Province . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): It was sent only to the Registrar of the High Court?

**Sardar Sant Singh:** Yes, Sir, and the copy of the letter from the Officiating Registrar reads like this:

"I am directed to forward",—he was only directed to forward—"a statement showing the number of criminal appeals from the orders of the section 30 Magistrates filed in the High Court and the proportion of successful appeals, etc."

Then, further on, it says:

"I am also to enclose a copy of the opinion recorded by the Honourable Mr. Justice Din Muhammad on the Bill and to say that all the Honourable Judges concur with this opinion."

This is the letter from the Officiating Registrar.

**Mr. President** (The Honourable Sir Abdur Rahim): It was published in the Punjab Gazette.

**Sardar Sant Singh:** Yes. The general practice which I know about the circulation of these Bills in my province is that copies of these Bills are sent to the District and Sessions Judges and District Magistrates of the various districts, and the latter circulate these copies to Bar Associations and invite their opinions. Then, those opinions are forwarded to the Local Government who in turn forward them to this House. In this case nothing was done.

**The Honourable Sir Nripendra Sircar** (Law Member): They read the Gazette. They could have sent their opinions.

**Sardar Sant Singh:** It is a very great surprise to me, if not an actual shock, that the Honourable the Law Member says that they had a right to send their opinions and they might have sent them. May I ask, if this is the view, why the same procedure was not adopted by other Local Governments? That is no reason. Many Bills are circulated by the vote of this House for eliciting opinion. The established practice is that opinions are only sent when they are asked to be sent . . .

**The Honourable Sir Nripendra Sircar:** No. no.

**Sardar Sant Singh:** . . . . though there is no bar and some intelligent people may have taken it upon themselves to send their opinions, but the uniform practice is that the Local Government never uses its powers to suppress those opinions. What I submit is that, ordinarily speaking—I am not speaking of extreme cases as the present one, but ordinarily speaking,—the co-operation of the Local Governments is very desirable in such matters. Here my complaint is that that co-operation has been entirely lacking.

**Mr. President** (The Honourable Sir Abdur Rahim): Apparently what the Punjab Government say is that a similar question was considered in the local Council, it found very little support and the Governor in Council is not prepared to change his opinion. That is what the Punjab Government say. Is the Leader of the House in a position to explain what happened?

**The Honourable Sir Nripendra Sircar**: I have no information because we had nothing to do with it. It was sent by your office to the Local Government. I do not say that two wrongs make one right, but I do not know how these alert bodies like Bar Associations were prevented from sending their opinions if they wanted. I am not justifying the conduct of the Punjab Government.

**Sardar Sant Singh**: What happened in the Punjab Council was that during the Budget Session a cut motion was moved by one member to discuss this very question of section 30 magistrates.

**Mr. President** (The Honourable Sir Abdur Rahim): There was no Bill, but only a cut motion?

**Sardar Sant Singh**: Yes, a cut motion only. As generally happens in our unfortunate province, the Punjab, a little assurance or a little promise that consideration would be given to the question after the new constitution came into force was sufficient to persuade the gentleman to withdraw the motion. I am not here to say anything one way or the other about what our friend did in the Punjab Council; I am rather thankful to him for having brought it to the notice of the Council. However, the fact remains that the principal province which is concerned with this Bill, as I will later show by reading from the other provinces which are affected by this legislation, did not care to get the opinion of the persons concerned.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member simply wanted that a copy of the Bill should be sent to the Bar Association. I understand that the office has written to the Punjab Government to circulate it to the Bar Association for opinion and the reply has not come yet. I do not think the Honourable Member asked that the Bill should be circulated to any other person or authority. I understand that an exact copy of the letter of the Honourable Member was sent.

**Sardar Sant Singh**: The position remains that we are not in possession of the opinions of the various bodies concerned in my province. Therefore, the allegations that were made on the floor of this House that public opinion in the Punjab did not favour this legislation cannot be refuted now. The very fact that there was an attempt not to get the opinions speaks volumes in favour of this Bill.

Coming to the merits of the Bill, my submission is—I submitted to the House last time when I moved this Bill—that the main points which influenced me in bringing forward this Bill are, first, that I do not want that after the Punjab has been placed on the same footing as the major provinces there should be left any trace of legal inferiority complex so far as the Punjab is concerned. Whatever reasons there might have been in the earlier years when the Punjab was a non-regulation province, those reasons do not exist at the present stage. The time has come when a uniform system of procedure should be applied to all major provinces, or

rather to all provinces of India, whether major or minor. The second point which I attempted to explain last time and which I wish to reiterate with your permission is that in these days when we claim to be advancing on democratic lines there is no reason why the rule of law should not be substituted for the rule of the executive. I can understand the Honourable the Home Member and all the District Magistrates trying to keep the executive power in their own hands. But I do not understand why the Honourable the Law Member who is apparently the exponent or advocate of the rule of law in the country should not agree with me that the time has come when the rule of law should find a better place than it has so far found in judicial decisions in India. Sir, I still stick to the opinion that I gave last time or that I have been giving for so many years whenever I have had an occasion to talk about the justice administered in such Magistrates' Courts, and that is that as a matter of fact certain restrictions have been placed by the orders of either the Local Government or the High Court which compel these magistrates to treat these criminal trials with undue haste. They are required to send a return as to the number of cases disposed of during a month. They are required, not they, I should rather say, a report is always submitted by a subordinate petty police official attached to the Court as to the number of witnesses examined by the magistrate each day. These two restrictions are such that, however much we may disagree as to the expediency or otherwise of the repeal of this Act, we will certainly agree that these two restrictions to a great extent prevent the magistrates in applying their best minds to the trial of the case and to weigh the evidence in a judicial spirit. When it is remembered that a magistrate's advancement, his increment, mainly depend upon the report that he receives from the district magistrate, the remarks made by the district magistrate in his service book make him dependent upon the good will of the district magistrate; in order to win that good will, he is bound to consider the effect of decisions upon the law and order in his *ilaga*. Because a magistrate is invested both with administrative powers as well as judicial powers his considerations of administrative expediency always outweigh his judicial spirit of doing justice to the criminal who is at the bar before him. These are the main questions which affect the administration of justice. Objections have been raised in some of the opinions, which I will deal with later on, that my Bill as a matter of fact betrays a mistrust of the judiciary. I deny this charge. The very magistrate who is exercising his powers as a magistrate changes his outlook and point of view as soon as he is promoted to the position of a sessions judge or assistant sessions judge. No difference is made so far as his personality or mentality is concerned but as soon as the position is changed, the outlook is changed and that changed outlook brings more confidence in him than the position which he occupied before that. From the opinions received I find that District Magistrates in charge of districts view with suspicion the outcome of my Bill. One gentleman, the District Magistrate of Burdwan, has gone so far as to say that if adopted the Bill would certainly increase lawyers' profits at the expense of the litigant. Possibly this is why the Bill was brought forward. Let me quote his second reason. "Also it would in practice mean that most of the present special power magistrates would have to be promoted to sessions rank and I can see no reason why a man who is considered inefficient or corrupt or subservient as a magistrate should change his nature and forthwith become efficient, incorruptible and upright when described as assistant sessions judge." Now, here is a gentleman

[Sardar Sant Singh.]

who does not see the principle underlying the Bill, refuses to consider the principles of criminal jurisprudence as evolved by long experience in Britain but immediately jumps forward to ascribe motives for this Bill. I think if this principle is correct that Bills are brought for the purpose of increasing litigation and filling the pockets of the lawyers, then every Bill tends to complicate the legal machinery to the benefit of the lawyers. So, if the guilt is to be judged in this way, I think the Honourable the Law Member and the Legislative Department would be more guilty of it than myself who has brought in a single amending Bill. Another district magistrate went so far as to say (This is the District Judge of Dera Ismail Khan) that the allegation that the district magistrate exercises influence or interference in the work is clearly false. Now, Sir, I did not mean to refer to this side of the question but is there a practising lawyer anywhere in India who does not know that in political cases particularly and in the cases of certain habitual criminals, the district magistrate generally points the way in which the decision should be adopted. If there is one, I will say that either he has been practising with his eyes closed or he refuses to disclose the true facts for reasons unconnected with the merits of the question. There can be no doubt, and I know it about many magistrates who are not entrusted with the trial of political cases that in the first two or three cases they tried judicially, they let off the accused. No cases were sent to them for further trials. Interference does not mean that he writes orders or sends written instructions as to what to do but the way in which the cases are distributed by executive and administrative action is sufficient to direct the channel of thought of a magistrate. I wonder how these considerations are being brushed aside by simply saying that these allegations are false. Coming to the various opinions that have been received from the different provinces, I will first leave aside those provinces like Baluchistan and Bombay where they say that as the provisions of this section do not apply in their provinces, therefore, they were not called upon to give any opinion. Leaving such cases aside, (I will leave Burma also for it is going to be separated from India in another two months) I will deal first with Coorg in the order in which the opinions have been printed. You will find that the Chief Commissioner of Coorg, the District Magistrate and Sessions Judge of Bangalore, the Additional Judicial Commissioner, Coorg, and the Commissioner of Coorg are all in favour of the repeal of these provisions. Then, Sir, in Ajmer-Merwara, the Judicial Commissioner and the Bar Association are in favour, while the Commissioner of Ajmer-Merwara and the Additional District and Sessions Judge are against it. So is the City Magistrate. But there is one thing which is very important, Sir, in the opinion given by the Additional Judicial Commissioner, Coorg, . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Does the Honourable Member propose to finish his speech now?

**Sardar Sant Singh**: No, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim): Then, I adjourn the House till 11 o'clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Friday, the 5th February, 1937.

## APPENDIX "A"\*

REPORT OF THE COMMITTEE APPOINTED BY THE LEGISLATIVE ASSEMBLY TO  
REPORT ON CERTAIN AMENDMENTS PROPOSED TO BE MADE IN RULE 8 OF  
THE INDIAN LEGISLATIVE RULES.

We, the undersigned members of the Committee appointed by the Legislative Assembly to report on certain amendments proposed to be made in rule 8 of the Indian Legislative Rules, submit the following report on the said amendments—

1. *Proposed sub-rule (1).*—As this sub-rule is purely consequential, we have no comments to offer on it.

2. *Proposed sub-rule (3).*—

- (a) We considered whether the objects of the amendments could not be better achieved by limiting the total number of notices of questions which might be sent in by each member during a session. A majority of us were opposed to any such limitation.
- (b) Whilst a majority of us were in favour of a limit on the number of questions which might be put for oral answer on any one day by individual members, there was divergence amongst us as to the appropriate number. Some of the numbers actually suggested do not imply that the author of the suggestion accepted the principle of any limitation at all.

Two of us suggested a limit of 12 questions per day, one a limit of 10, two a limit of five and five a limit of three. Two of us suggested a limit of three questions, provided that discretion should be given to the President to increase that number if on any day he finds that the agenda, on the basis of the normal limitation, are not sufficient to occupy the whole of the time allotted to questions, which is at present fixed at one hour.

This proviso was considered separately on its merits, and a majority of us were in favour of it.

3. We considered, as a question apart, whether members should be required, at the time of sending in notice of a question, to state the day on which it was to be put for answer. A majority of us were against the proposal.

4. *Proposed sub-rule (4).*—This sub-rule affects the relations between the Legislative Assembly office and the Government, and not the rights of members of the Assembly in respect of putting and answering questions. We do not feel called upon to advance any opinion on it.

5. *Proposed sub-rule (5).*—Three of our number were opposed to this sub-rule, one of them desiring the omission of the requirement for consent of the Member of Government concerned. Eight of us were in favour of the sub-rule as it stands. One of us accepts the sub-rule, provided that it is made clear that the President shall have discretion to depart from the strict principle of "rotation" if he finds that there are not sufficient questions on any day to occupy the question hour—for instance, to call upon a department to answer questions on two or more consecutive days.

6. *Proposed sub-rule (6).*—Opinion was equally divided between us as to this sub-rule. Six of us accepted it, one of whom suggested that the written answers to questions not reached on any one day for oral answer should be laid on the Table on that day instead of on the next day available for answering questions. Two of us would modify the sub-rule by providing that questions not reached for oral answer should be carried forward for answer on days when there were no questions for answer, or not sufficient questions to occupy the question hour—such questions to take precedence after questions set down for answer in accordance with the normal procedure. Questions left over at the end of the session would, under this proposal, be treated as unstarred and receive written answers.

One of us suggested a further provision imposing on the President the duty of fixing for each day a number of questions sufficient to occupy the question hour. ▽

Four of us are opposed to the sub-rule. Of these, two have fundamental objections to the sub-rule, one criticises it on the ground that it will place the President in an invidious position in the matter of setting down a sufficient, but only a sufficient, number of questions for answer on each day, and one objects to the sub-rule because he is in favour of retaining the present system of a continuous list of questions.

N. N. SIRCAR.

\*N. M. JOSHI.

\*MUHAMMAD YAKUB.

P. J. GRIFFITHS.

\*SANT SINGH.

†COWASJI JEHangIR.

SHER MOHD. KHAN.

‡MOHD. YAMIN KHAN.

\*A. C. DATTA.

LESLIE HUDSON.

J. D. ANDERSON.

A. DE C. WILLIAMS.

NEW DELHI ;

*The 3rd February, 1937.*

---

\*Subject to a minute of dissent.

†Subject to a minute.

‡Subject to not agreeing with clause 6.

## MINUTES OF DISSENT.

I do not agree with the majority of the Committee. I admit that there has been an unreasonable use of the privilege of asking starred questions by a few Members of the Assembly depriving a large number of other Members of the opportunity, due to them, of asking a reasonable number of starred questions. But in view of the fact that a drastic regulation of the privilege of asking starred questions applying to all Members is undesirable, I would like, at first, to try to persuade those few Members who have so far made unreasonable use of their privilege, to desist from doing so, by friendly advice by the President given to those Members directly and through the Party Leaders. I have no doubt, as past experience has shown, this will achieve the object which the Committee has in view.

The proposals made by the majority of the Committee are not also likely to achieve the object which we have in view, if a few Members persist to make an unreasonable use of their privilege. The difficulty which has been created is due, not only to the largeness of the number of the questions asked, but is also due to the priority which is secured to a large number of questions by a few Members by means of an earlier notice. If the evil is to be tackled successfully, regulations will have to be made, not only as regards the curtailment of the number of questions but as regards the securing of priority for too large a number of questions on account of earlier notice. Even if the Committee's proposals are adopted, the evil will not be prevented. Supposing there are 80 days on which questions can be asked in a year and supposing that between 2,000 to 3,000 questions can be answered during the question time of those 80 days, 10 to 15 Members making an unreasonable use of their privilege of asking three questions a day and by spreading over their questions over all Departments can successfully deprive the other Members of the use of their privilege. The analogy of the practice of the House of Commons will not hold good, if we believe that some Members of the Assembly will act in such a manner as to be obstructive, as the success of the House of Commons practice is not so much due to regulations as to the pressure of public opinion of the House exercised through the Chair, the Party Leaders and the House as a whole. My proposal therefore is, that if the right of priority which is secured through earlier notice is regulated, the object which we have in view will be better secured without even curtailing the number of questions to be answered daily or even in a session. If a rule is made that the right of priority secured by earlier notice can only be available, in the first instance, for, say, the first 25 questions of each Member and cannot be used by him thereafter till other Members whose questions upto the number of 25 are due to be answered had an opportunity of receiving replies. If there are no questions outstanding of which notice has been given by any Member who has not exercised his right upto the full limit of 25, another opportunity should be given to those Members whose 25 questions are already answered, to have another group of 25 questions answered. The working of such a regulation can be successfully managed by one assistant in the office of the Assembly, by keeping a register of Members and the number of questions they put and get answered.

If the proposal made in the preceding paragraph is not accepted, my alternative proposal is that instead of regulating the number of questions to be answered daily, there should be regulation of the number of questions which each Member can get answered during a session. I would put that limit at 25 in a longer session and at 15 in a shorter session. On several occasions Members will find it desirable to get more than three questions answered on one day, if they relate to one subject matter. In such a case the answering of

three questions on one day and another group of three questions on another day in another week will be inconvenient and will not have the same effect as the answers received on one day.

I object to the proposal that the responsibility of fixing the number of questions to be answered on each day should be placed on the President. If some questions remain unanswered on a particular day, the blame will fall on the President. If the President selects a shorter number of questions and some question time is lost, then also the blame will lie on the President. I feel, it is absolutely wrong to place the President in this difficult position and to take the risk of the slightest injury being done to the dignity of the Chair and the respect due to it. In the House of Commons the member asking questions also chooses the date on which his questions should be answered and so if his questions remain unanswered orally and consequently become unstarred, he takes the responsibility on himself. We are told that the Government of India, also proposed to throw the responsibility of selecting the days on which a Member's questions will be orally answered, on the Member asking the question, as is the practice in the House of Commons. But this proposal is not adopted by the majority of the Committee.

N. M. JOSHI.

*The 3rd February, 1937*

We are not in favour of placing any limitation to the right of asking questions for oral answers in the open House. The system has been working for about 17 years and without any complaint having been made by any non-official Member that the same has worked to his prejudice. There is no urgency of that nature which should justify us in being a party to a restriction in this important right on the eve of the expiry of the present Legislatures under the old Government of India Act. The Heavens are not likely to fall if the present rules are permitted to continue for another year to two. It is not equitable for us to tie the hands of our successors. We therefore want to make it quite clear that no restrictions should be introduced.

If the principle of restricting this right is to be accepted, the procedure to be devised should be quite simple and less cumbersome. The proposed draft amendments are so complicated that this will involve very difficult if not impossible task to the office and may lead to throwing greater responsibility upon the President. Therefore we will suggest that instead of proceeding to restrict the number of questions per day, there should be maximum number prescribed for each Member giving further power to the President to relax the rule in case where all the questions that have been allowed have been exhausted before the close of the session. The present standing orders as to the framing of the lists and the orders of the precedence should be allowed to stand. This will carry out the object underlying the present proposed draft without introducing unnecessary complications. The analogy of the practice prevailing in the House of Commons is not sound because while the House of Commons sits throughout the year and the right to ask questions can be exercised as soon as the need for asking information is felt, this Legislature sits twice a year and such right can only be exercised when the House is in session. That is why the notice of such questions is sent during the time when the House is not sitting which leads to accumulation of the number of questions. Therefore we will propose the following for the sub-rule 3 :—

**“Maximum number of questions asked by a single Member for oral answers shall be limited to two hundred in the Budget session and one hundred in the autumn session :—**



**Provided that when all such questions have been answered before the close of the Session the President may permit any Member who has already exhausted the quota of questions for oral answers to ask more questions during the remaining days of the session subject to the conditions laid down in the standing orders."**

If, however, the proposal for limiting the question per day is adhered to we will raise the number from 3 to 12.

*Proposed Sub-Rule 5.*—We are not in favour of the rule as it stands. This sub-rule we are afraid will be found un-workable in practice. Therefore, we will suggest that the phrase in 'rotation' should be omitted in line 2 of the proposed draft and further words "unless the President with the consent of the Member of the Government to whose Department the questions relate" be omitted, this amendment would not place any undue difficulty in the way of the President and will give greater discretion to the President to call any Member of the Government to answer any question on any day, if he thinks the public interest requires it.

*Proposed Sub-Rule 6.*—We are in favour of omitting sub-rule 6 entirely. We are in favour of continuous list being maintained. The objection raised to the continuous list is that the same is inconsistent with the sub-rule 3 as proposed in the draft. We are not of that opinion. There is no sanctity attached to the questions being asked on the day for which they have been tabled. As the questions have been left over through no fault of the Member in whose name the questions stand, it is very hard that such Member should be penalised for fault of others. Therefore, he should be permitted to ask the questions next day and his questions should be treated as having been answered on the previous day. The language of Sub-Rule 3 can be made suitable to this or if this suggestion does not find favour with the House, we are of opinion that the questions held over on any one day may be placed at the end of next days question paper and this process should be carried on till the same have been answered.

We are not in favour of mentioning the particular date in the notice when the same should be answered. This will lead to many complications and we fear that this may practically defeat the object of asking oral answers and thus result in depriving the Members of their right to ask supplementary questions.

SANT SINGH.

*The 4th February, 1937.*

A. C. DATTA.

---

The motion on which we are called upon to express our opinion relates to a highly important matter and yet, unfortunately, we cannot make a formal or regular report. The suggestions and proposals contained in our report and the minutes of dissent are merely recommendatory and the Government are not in any way bound to accept them. Yet considering the general feeling of the House, and its far reaching effects on the rights and privileges of the Members of the Assembly, I hope and trust that at least such recommendations, as have the unanimous backing of non-official Indian Members of the House, would be accepted by the Government.

I am not opposed to fixing of limit on the questions which a Member may be allowed to ask on any one day. But the limit of three suggested in the draft of the Honourable the Law Member, appears to be very small. Even in the House of Commons, when restriction was imposed on members in putting

questions in the House, the first limit imposed was eight then it was reduced to four and only recently the maximum was fixed at three ; therefore, there can be no justification for fixing a limit of three questions in the House for the first time. Moreover, the number of the members of the House of Commons is more than three times the number of the Members of our Assembly and the analogy of the House of Commons cannot be applied to the Indian Legislative Assembly as constituted at present. However, taking into account the fact that the House of Commons sits for a much longer period than the Indian Legislative Assembly, I would propose a limit of at least five questions for a Member on a single day. But I would also like to have the amendment proposed by Sir Cowasji Jehangir to be accepted in order to afford more facilities to the Honourable Members of the House.

The most objectionable feature of the draft amendment is that which is contained in number 6. The right of putting supplementary questions is really a very valuable privilege of the Members of the House and any restrictions imposed on this right cannot be acceptable to any non-official Indian Member of the Assembly. I am strongly opposed to the provisions contained in number 6 of the proposed draft. I have given an amendment on the subject which provides that starred questions placed on the list of questions for answer on any day, if they are not answered within the time available for answering questions that day, should remain pending and during the course of the Sessions and if all the other starred questions which would be answered under the new rules are exhausted and no more questions are left then these questions which are pending should be taken up and the first hour of the Assembly should every day be devoted to answering these questions until the end of the Sessions. And any questions which are left un-answered at the end of the Sessions should be treated as unstarred.

*The 4th February, 1937.*

MUHAMMAD YAKUB.

## MINUTE.

*Sub-rule 3.*—I agree to not allowing more than three questions to be asked by the same Member on any one day, provided that the President at his discretion may raise this figure without limit, only if he finds he is unable to place sufficient questions on the Agenda to occupy one hour on any one day during the sessions.

I agree with the substance of sub-rule 5, but I would omit the words "in rotation". This will enable the President to call upon any Member of the Government to answer questions on consecutive days, if he finds it necessary to do so, to enable him to place sufficient number of questions on the Agenda to occupy one hour on any one day.

If we once accept a restriction on the number of questions asked by the same Member on any one day, we must accept sub-rule 6. But every precaution should be taken to prevent questions that are not answered on any one day becoming unstarred questions. I would therefore suggest the following addition to Rule 6 :—

*Sub-Rule 6 (a).*—The President shall place on the Agenda on any one day just such number of questions as, in his opinion, can be answered within the question hour.

*Sub-Rule 6 (b).*—Notwithstanding sub-rule 6 (a), any questions that may not have been answered on any one day should be placed on the Agenda, after all questions have been answered at any time during the sessions.

COWASJI JEANGIR.

The 3rd February, 1937.

---

# PROPOSED AMENDMENTS TO RULE 8 OF THE INDIAN LEGISLATIVE RULES.

That in rule 8 of the said rules—

(a) in sub-rule (1) the following shall be inserted at the beginning, namely :—

“ subject to the provisions of sub-rules (3) to (6),” ; and

(b) after sub-rule (2) the following sub-rules shall be added, namely :—

“ (3) Not more than three questions asked by the same member shall be placed on the list of questions for oral answer on any one day.

(4) No question shall be placed on the list of questions for answer unless—

(a) at least five clear days' notice of the admission of such question by the President has been given by the Secretary to the Member to whom it is addressed ; or

(b) the President, with the consent of the Member of the Government to whose department the question relates otherwise directs.

(5) The time available for answering questions shall be allotted on different days in rotation for the answering of questions relating to such department or departments of the Government as the President may, from time to time, provide, and on each such day, unless the President with the consent of the Member of the Government to whose department the question relates otherwise directs, only questions relating to the department or departments for which time on that day has been allotted and questions addressed to non-official members, shall be placed on the list of questions for answer.

(6) If any question placed on the list of questions for answer on any day is not answered within the time available for answering questions on that day, the member to whom the question is addressed shall upon the next day available for the answering of questions lay upon the table of the Chamber a written reply to the question, and no oral reply shall be required to such question and no supplementary questions shall be asked in respect thereof.”

---