

[Shri Jhulan Sinha]

her day. Is it open to me to withdraw the challenge that I made on that day?

**An Hon. Member:** He does not want the division.

**Mr. Deputy-Speaker:** I will put it to the vote of the House and we can decide it by the voice vote.

The question is:

"That the Bill to provide for prevention of hydrogenation of oils in India for matters connected therewith be taken into consideration."

*The motion was negatived.*

14:31 hrs.

#### HINDU SUCCESSION (AMENDMENT) BILL—Contd.

(Amendment of section 14 by Shri Subbiah Ambalam)

**Mr. Deputy-Speaker:** The House will now resume further discussion of the following motion moved by Shri P. Subbiah Ambalam on the 7th April, 1961:

"That the Bill further to amend the Hindu Succession Act, 1956 be taken into consideration."

Out of one hour allotted for the discussion of the Bill, 41 minutes have already been taken up on the 7th April, 1961 and 19 minutes are now available.

**Shri Tangamani (Madurai):** I rise to support the Hindu Succession (Amendment) Bill moved by my hon. friend Shri Subbiah Ambalam on the 7th April, 1961. The statement of Objects and Reasons appended to the Bill has clearly explained the purpose for which this amending Bill has been brought. Many hon. Members have addressed themselves pointedly

to the specific provisions of this Bill, excepting one or two hon. Members who, I must submit, had some misconceptions about the intention of the Bill. Otherwise I do not think they would have raised the objection that they did.

I would like to reiterate that the Hindu Succession Act of 1956 conferred, for the first time, property rights on women, both widows and daughters. As the House is aware, the British Succession Act provides equal rights to men and women alike, that is to sons and daughters. If X dies intestate leaving a widow and children, according to the British practice the widow will be entitled to one-third and the children to two-thirds of the estate irrespective of whether they are males or females. Where a person dies intestate leaving only the widow, half of the estate will go to the widow and the other half to the Crown.

The question did arise on the actual definition of "widows" particularly in the colonial countries, because in the colonies under the British Empire in those days there were men who were having more than two wives. In Malaya, the Chinese nationals who were British subjects then had generally more than two wives. The riches of a rich Chinese Malayan were tested by the number of wives he possessed. There was also a Privy Council decision in a famous case known as The Seven Widows Case. A Chinese millionaire died, leaving seven widows and some children. The question arose whether the one-third share, to which a widow was entitled, was to be shared equally among all the seven widows, or whether it was to be given only to the primary widow, because under the Chinese practice there were primary wives and subsidiary wives.

**Shri T. B. Vittal Rao (Khammam):** Good God, what is this?

**Shri Tangamani:** This was some time in early 1905. This Privy Council decision is there. Their Lordships

held that where there are widows, that is, where a person died leaving widows, we cannot make any distinction between the widows and ultimately it was decided that all the widows would take the share equally.

So far as India is concerned this right, which had been extended under the British law, had not been extended to the widows or to the daughters. All that the Hindu succession Act provided was only a limited estate to the widow. So we are happy that, for the first time in the year 1956, this restriction was taken away. I may be permitted to quote section 8 of the Hindu Succession Act which reads thus:

"The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule."

As the House is aware, class I of the Schedule mentions "the son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son and other heirs" and class II refers to the others.

This particular amending Bill wants to give adequate protection both to the widows and the daughters. I would like in this connection to read section 14(1) of the Act, of 1956 which says:

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

If a person died before 1956 when the Act came into force, the widow, who was entitled to a limited estate, got by virtue of the Act of 1956 ab-

solute lien on the property. This led to certain abuses. The intention of this Bill is only to rectify this lacuna and prevent those abuses.

I shall mention a particular case, without giving the names. X died in the year 1951, leaving a widow and three daughters. During the lifetime of the deceased all the three daughters had been given in marriage. Now, the widow had a limited interest in the estate. But by virtue of the 1956 Act she got absolute interest. And what she has done is to give away the bulk of her property, which she has inherited, to the daughter through her first daughter, that is to her grand-daughter, and also to her son-in-law, completely depriving the other two daughters of any share. It may be that she had a special love for a particular daughter. The intention of the legislation is to treat the widow and the daughters alike. Here is a widow who has got the limited estate now developing upon her absolutely, and she is now giving the entire property to one of the daughters or rather to the daughter through that daughter. And the other two daughters have absolutely no *locus standi* in the matter, according to this.

That is why I submit that this amending Bill is most appropriate. I would also read the relevant portion from the amending Bill which will show how this is sought to be rectified. I have already read out section 14 of the 1956 Act. Clause 2 of the Bill says:

"In sub-section (1) of section 14 of the Hindu Succession Act, 1956, the following provisos shall be inserted, namely:—

"Provided that where a man has, before the commencement of this Act, died intestate leaving a widow or widows and other female heirs mentioned in class I of the Schedule, the widow and the other female heirs shall take the property absolutely in accordance with the provision of section 10,"

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'Provided further that any alienation made by the widow without consideration after the commencement of this Act, shall be void to the extent of any share in excess of that prescribed in the proviso above.'

I must really congratulate the hon. Member who had drafted this Bill, because he has not only provided against the abuse which I have mentioned, but he has also provided for *bona fide* transfer. There is likely to be a *bona fide* transfer of property; in such cases, the second proviso meets the ends of justice.

I must mention here that we had occasion to discuss this matter with people who have administered justice, and they felt that an amendment such as this one would really meet not only the ends of justice but also the intention of the legislature.

I would not say more, because many hon. Members have dealt with this point already. But I am sorry that one Member, and that too, a lady Member, took serious objection to this, thinking that we were trying to deprive the widow from exercising her rights.

The purpose of this measure is only limited, namely to provide equal rights to the daughters and the widows also, and where the widow has done something in a *bona fide* manner, to give adequate protection to that *bona fide* transfer also.

I find that there is a motion for circulation. This is a Bill which needs to be circulated, so that we can have the views of the Bar Associations and the views of those who have administered justice, and more particularly, from the State from which I come. This matter has been engaging the attention of many of the leading practitioners there.

So, I submit that at least the motion for circulation of this Bill may be accepted by the House

**Shri Narasimhan (Krishnagiri):** I request Shri Subbiah Ambalam to accept the amendment suggesting that the Bill may be circulated for eliciting public opinion thereon, and further, I would commend to the Law Minister also the acceptance of that amendment.

Apart from the reasons already stated, I have one more reason, and a somewhat different reason. During the non-official hour, we discuss ever so many things. Many problems are discussed here, cutting across party lines. It is a kind of legislative loud thinking, and this will be further helped, and all our legislations will have a better basis if the non-official day is used for seeing that current problems are examined formally and informally both inside the House and outside the House.

By way of encouraging this kind of methodology also, I request the Law Minister to accept this motion for circulation and thereby set a good example towards his other colleagues in charge of the other Ministries. I had a very bitter experience in the case of a Bill relating to another Ministry, where they declined to enjoy the benefit of such loud thinking.

I hope the Law Minister will accept the motion for circulation, and I appeal to the hon. Mover also accept the amendment to this effect.

**राजा महेन्द्र प्रताप (मयुरा) :** उपाध्यक्ष महोदय, मुझे एक छोटी सी प्रार्थना करनी है। यह ममला धर्म से ताल्लुक रखता है और हमारी जो पालियामेंट है, यह सैक्यूलर पालियामेंट है।

मेरे ख्याल में इसका अस्तित्व नहीं है कि हिन्दू धर्म, सिख धर्म, इस्लाम दीन या किसी और दीन धर्म के बारे में कोई कानून बनाये ।

**The Deputy Minister of Law (Shri Hajarnavis):** I accept the motion for circulation, which has been moved by some hon. Members, and which, I understand, has been accepted by the hon. Mover.

Without dissociating myself in any manner with what has happened in the case of the other Ministries for which no doubt, good and adequate reasons exist, what Shri Narasimhan has said, strikes, if I may say so, a very sympathetic cord in my heart, namely that the non-official business hour may be employed in examining without reference to party loyalties, the personal laws of the citizens of this country, and that as a result of the cumulative wisdom of this House, we may be able to broaden the freedom which the various under-privileged persons or the under-privileged sex has been able to win so far.

On an earlier occasion, it was given to me, it was my privilege, to accept a similar motion for circulation. I believe that during my tenure, this is probably the fourth or the fifth time that I am accepting a similar motion.

The anxiety of the lady Members of this House about the House undertaking an examination of any legislation which deals with women's right to property is understandable. It was after a long, a very bitter fight that the Hindu women had been able to win rights to property, which were denied to them under, what in my opinion was wrong reading of the Hindu texts by alien judges. As a result of the efforts of some of the leading jurists in Hindu law, and as a result of the efforts of both male and female reformers of Hindu law, we have been able to achieve a great deal of reform in Hindu law, which we have put on the statute-book. There are many who think, and I am one of them, that we have not gone

far enough, and that probably we may continuously undertake revision of the Hindu law, in order to see whether those rights which have been granted to the Hindu women cannot further be enlarged. But, any reopening of the issue has certain risks, and it is that risk of which the hon. lady Members were apprehensive, namely that once a provision dealing with the rights of the Hindu women to property is brought into controversy, it is quite possible that instead of progressing further, an attempt may be made to curtail the rights.

Now, in this particular Bill, as far as I have been able to see, there is no such attempt at all, and if there were any, I, for one, would certainly very strenuously oppose it.

Two sections are there, which have already been referred to in this House. One is section 8 which reads thus:

"The property of a male Hindu lying intestate shall devolve according to the provisions of this Chapter, firstly upon heirs, being the relatives specified in class I of the Schedule."

When we go to class I of the Schedule, we find that in class I are placed son, daughter and widow, so that, if there is a Hindu who dies without making a will after the Act comes into force, then the son, daughter and widow all inherit simultaneously.

The next section which we must deal with, and to which amendment has been moved now, is section 14, which reads thus:

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

As a result of this, wherever there was a Hindu woman in possession of property as a limited owner, her rights were enlarged.

Under the Hindu law as it stood, before this Act came into force, daughters had no right whatsoever. If at

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all the daughter had any interest, it was that of a reversion. If a man died leaving a widow and a daughter, then the widow had a limited interest, and the daughter had merely a reversionary interest; and it was after the widow's limited interest came to an end, either by surrender or by her death, that the daughter could inherit the property.

This did not apply to the son, because, if there was a son living, then after the Hindu Women's Right to Property Act came into force, both the son and the mother inherited simultaneously; but the daughter did not inherit at all, so that, if before the Act came into force, the death had taken place, then the daughter was merely an expectant owner or was merely expecting to inherit the property after the death of widow.

Now as a result of section 14, all the rights of the reversioners have disappeared completely including that of the daughter. There is no ambiguity or vagueness in it. It was quite possible at the time section 14 was enacted to move an amendment on the lines of the Bill which has been framed by the hon. Mover. But that was not done. The Hindu law maintained distinction already made between the right of the son and that of the daughter.

It was open to us to lay down a principle that the rights of the daughter would come into existence only after the Act came into force. So far as the daughter as a reversioner was concerned, there was no attempt or desire to differentiate her from the other reversioners at all. If the nephew was living, surely he had to wait till death or surrender. Similar is the case with the daughter.

Therefore, I would not agree with the hon. Mover when he says that there is some kind of lacuna or inconsistency between one part and the other in so far as the framing of the Act is concerned. We may agree with him when he says that the same principle was not applied in the case of

son and daughter or that retrospectively the rights of the daughter were not equated with those of the son. But I will not agree with him when he says that this was something which was lost sight of at the time the Hindu Succession Act was framed.

That leads us to the question whether we ought to introduce that principle retrospectively. Now generally speaking—I am not laying it down as an invariable rule—the legislature ought not to undertake any retrospective legislation unless there are compelling reasons to suppose that in using certain words we had departed from the principle which we had already enunciated in the Act itself. If there is anything in the Act to show that in spite of this principle to which we were entirely committed, in choosing our words we had not been able to carry out that principle, we might take recourse to retrospective legislation to make the meaning or the intention of the legislature clear, so that the transactions which the words excluded by accident, or by wrong choice of words might again be brought within the scope of the Act. But I submit the present case does not come within that category. But on this matter Government themselves will suspend their judgment till they have been able to elicit the opinion, as my hon. friend, Shri Tangamani said, of Judges who have dealt with these cases, of Bar Associations who have had experience of such cases and so on. Let us see how many cases are actually affected by this. If during the time the Act is in force, the mischief has already been done and transactions have already been entered into, then it would, I submit, be wrong in principle to undertake legislation in order to unsettle a few individual transactions, merely because we now find that the principle which we think ought to have been applied has not been applied in the first instance.

Thirdly—again reverting to what I had mentioned earlier in the House—so far as these Acts are concerned,

I am loath to reopen their provisions. There is something in what American jurists have said, in living with an Act. Let us have the experience of these Acts. Let us see how they work. We have not lived long with this Act. It is only four or five years old. Let the highest courts decide. Our own apprehensions may be allayed by the pronouncements of the highest courts. We may read the Act in a particular manner. It may be that our first impressions are wrong. After mature consideration, after the various courts have considered the matter and after the matter has been fully debated in the highest court, if the highest court takes a decision which removes our apprehensions, our legislative effort would have been in vain. It is not that every time that we feel that a certain doubt exists about the interpretation of an Act we should rush to legislation. After all, in making a change in the law that has been administered for four or five years only, it is quite possible that unwittingly we might be making a change which is worse than the present law. Therefore, let us see how the Act works.

**Dr. M. S. Aney** (Nagpur): May I ask the hon. Minister if during these four or five years that the Act has been in force any case has gone up to the Supreme Court and their decision given?

**Shri Hajarnavis:** As far as I am aware, no court, the High Courts or the Supreme Court, has probably dealt with this matter.

**Shrimati Renu Chakravartty:** (Basirhat): The daughter is considered not to have any *locus standi* even to make the appeal. That is what Shri Tangamani tells me.

**Shri N. R. Muniswamy** (Vellore): Is there any instance brought to the notice of Government that there has been injustice done to the daughter?

**Shri Hajarnavis:** No such case has been brought to the notice of Government. As far as I have been able to ascertain, there is no such case at all.

**Shri N. R. Muniswamy:** So the amendment is premature.

**Shri Hajarnavis:** These are the various considerations. What the Bill tries to do is to unsettle retrospectively certain transactions, to which, as I said, *prima facie*, there is a very serious objection. If the law is clear, if there is nothing to show that the law as stated in the statute was not intended to be the law, then I submit we ought to be slow in making retrospective changes. That is the general consideration by which we ought to be guided.

It may be that legislation can be better framed. We could have used a clearer or more felicitous phrase while framing the Act. But as I said, in all these Acts there is a great deal of deliberation and a good deal of compromise. If we think that the Act is a workable Act and is something which the people have found satisfactory and which the courts have been able to interpret, then I submit that it would be nothing but vandalism to try to change it every time some apprehension comes to our mind.

**Shri N. R. Muniswamy:** Is he not accepting the motion for circulation?

**Shri Hajarnavis:** These are some of the considerations which will have to be put in the forefront of our mind when we deal with this. But as I said, we will not, at this stage, stifle any further discussion of the Bill. So Government will accept the motion for circulation.

**Shri Subbiah Ambalam** (Ramana-thapuram): I am grateful to the hon. Members who have been kind enough to support my amendment to section 14 of the Hindu Succession Act. I am also grateful to some of the Members who have expressed certain misapprehensions regarding the intention of my move. I think that is mainly due to not understanding the real implications of my amendment. My amendment does not intend to deprive a woman of a right in the property which has been vested in her. But it rather tries to enlarge and implement the real object of the main Act of 1956. I am also grateful to the hon. Minister, who has been kind enough to

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accept that there are certain hardships which I have pointed out in my amendment, for having accepted the amendment for circulation of the Bill for eliciting public opinion.

15 hrs.

But, I am unable to understand the argument of the hon. Minister that during the past 5 or 6 years, after this Act had come into force, no cases have been decided by the High Courts or the Supreme Court. I would like to draw his attention to the fact that section 14 is so clear that it gives no room for any interpretation by a High Court or by the Supreme Court. The section is so clear that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act shall be held by her as full owner and not as a limited owner. There is not a single word in this section which requires any interpretation of the court; and the cases that have been decided by the High Courts have been mainly on the interpretation of the word 'possessed'.

To cite an example, I will say this. A widow, as a limited owner, might have alienated her property and, actually, when this Act came into force, might not have been in physical possession of that property. Cases have been brought to the courts for a decision—to give an interpretation of this word 'possessed'; whether the court would consider the purchaser to be in physical possession or the widow, who, a limited owner, has alienated such property to be in constructive possession. That has been the nature of the cases that have come up for decision before the High Courts. Therefore, I should say that regarding the rights of a widow—as between herself and the daughters or step-daughters, if any—there has been no occasion for the courts to decide such issues.

After I had moved this Bill in this House I have received a lot of representations from people throughout the country, especially the daughters who have been hard hit by this section 14. I will give an example. Suppose a man died in 1951, leaving

properties worth about Rs. 2 lakhs, giving an income of about Rs. 5,000 per year. At the time of death he left 3 daughters and a widow. Under the law then prevailing, the widow inherited the property as a limited owner—in 1951. But, in 1956, by virtue of this section 14, she became the absolute owner, completely depriving any reversionary right of the daughters who are living. These daughters, under the existing law, have no right to this property; and this widow who is now the absolute owner has got every right to gift away the property to whomsoever she wants. This is the injustice and hardship that is being caused by this section 14.

Therefore, my submission would be that this is a real lacuna, the intended effect of this section. When this section was drafted and when the Bill was discussed in this House in 1955 and 1956, a lot of other issues and other interpretations were raised but not any issue similar to the one which I have brought in by way of amendment. I have read the entire speeches of the hon. Members then and the Minister of Legal Affairs then. But attention had not been focussed on this issue by the hon. Members. Therefore, I should say that this has never been considered; nor had this been pointed out by any Member. But, after this Act had been passed, all those cases which were pending at the time this Act was passed were unsuited—suits which had been filed by the reversionary heirs—by virtue of this section. This section is so clear that the limited owner shall hereafter become an absolute owner. The courts have no discretion or no chance to give any interpretation of this section. I submit that Government should....

**Mr. Deputy-Speaker:** Does the hon. Member agree to the amendment for circulation

**Shri Subbiah Ambalam:** Yes, I agree.

*(Fixation, Regulation and Control of Prices) Bill*

**Mr. Deputy-Speaker:** No date been given here. Does he want to fix some date?

**Shri Subbiah Ambalam:** I should say that this Bill may be circulated for eliciting public opinion and the opinions may be received on or before the first of August 1961.

**Mr. Deputy-Speaker:** That is all right. May I put it to the House then?

**Shri Subbiah Ambalam:** Yes, Sir.

**Mr. Deputy-Speaker:** The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st August, 1961."

*The motion was adopted.*

15.08 hrs.

ESSENTIAL COMMODITIES  
(FIXATION, REGULATION  
AND CONTROL OF  
PRICES) BILL

*By Shri Narayanankutty Menon*

**Shri Narayanankutty Menon:**  
(Mukandapuram): Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill to provide for fixation, regulation and control of the prices of commodities which are essential for the life of the community be taken into consideration."

The Bill, as it is stated briefly in the Statement of Objects and Reasons is intended for introducing statutory sanction for authorising the Government to fix the prices of all essential commodities and also to provide for punishment for violation of the same. The need for the fixation of the prices of at least the essential commodities will not be questioned by anyone, including the spokesmen of Government, because, ever since the Second Five Year Plan was launched, it has been agreed on all sides that the prices of essential commodities and also industrial raw materials are shooting very high and that because of the fluctuations of these prices the physical targets of the Second Five

Year Plan itself were, at one time, jeopardised. Therefore, I do not think the principles underlying this Bill will come across much opposition from Government. I am not taking the time of the House in going into details and arguing my case for the necessity of introducing such a Bill.

15.10 hrs.

[*SHRI JAGANATHO RAO in the Chair*]

Sometime back, the hon. Minister of Labour said in this House that between 1939 and 1947 the standard of living of the workers declined by 25 per cent and by 1951 they had just recovered the lost ground and by 1955 the real wages had increased by 13 per cent but that since 1956 the prices started rising and their gains had to an extent been wiped out. I am quoting it to lay threadbare before the House the fact that though there has been during 1939-1961 a substantial rise in the total monetary emoluments in terms of wages and dearness allowance the real wages remained static because every time the increase in wages to the workers and the middle-class people had systematically been mopped up because of fluctuation in prices of essential commodities. It is a serious problem which has been considered by the Government during the last one or two years. It has been stated that there is a substantial rise in the national income during the two Plan periods. Now, the Government itself has admitted that an enquiry committee will have to be appointed to find out where this increase in the national income has gone. When we look into the question of increase in prices and fluctuation in the price structure, it may not be very difficult to find out the actual culprit and the place where a substantial part of this national income is being taken away. Attention was focussed on this matter of prices at the time of the strike of the Central Government employees and also for sometime when the Second Pay Commission was considering the whole question. There has been a consistent demand that the