Shri Satya Narayan Sinha: It has already been announced. I have referred to it. It comes third on the list.

Shri Punnoose (Alleppey): I was not present in the House for a few days past. I want to have an information. I remember to have heard that the Travancore-Cochin State's budget is coming up on the 14th May for discussion here. Have you fixed a time-limit for that discussion?

Shri Satya Narayan Sinha: The Business Advisory Committee has allotted six hours and the House also has accepted it.

Shri Punnoose: Has the House accepted it?

Shri Satya Narayan Sinha: Yes.

HINDU SUCCESSION BILL—*Contd.*

Clauses 7 to 10

Mr. Speaker: The House will now take up the group of clauses 7 to 10 for which 2 hours have been allotted. This would mean that these clauses will be disposed of by about 1-30 P.M. Thereafter, the next groups consisting of clauses 13 to 15 and 16 and 17 will be taken up for which half an hour and 2 hours have been allotted respectively.

Hon. Members who wish to move their amendments may kindly hand over the numbers of their amendments to the Secretary at the Table within 15 minutes.

Sardar Hukam Singh (Kapurthala-Bhatinda): For clauses 7 to 10, we have got two hours. There was an objection raised that the Schedule should have more time, and it was pointed out that clause 8 has a direct connection and relation to the Schedule. Therefore, some hon. Members wanted that clauses 7 to 10 together with the Schedule may be taken up jointly and be discussed for four hours, and said that if this was done they would be satisfied. So, it was agreed that clauses 7 to 10 and the Schedule, all together, shall have four hours.

Mr. Speaker: Was it the desire of the House?

Some Hon. Members: Yes.

Mr. Speaker: Then, clauses 7 to 10 along with the Schedule may be discussed and debated together.

The Minister of Legal Affairs (Shri Pataskar): Clauses 7 to 10 may take about one hour. The Schedule is not so important. We may take the Schedule at the end.

Mr. Speaker: The hon. Minister says that clauses 7 to 10 may take about an hour or so. So whatever remains out of the two hours may be utilised for the Schedule. If these clauses and the Schedule are connected together, then also, they could all be discussed and disposed of together. Is there any objection?

Shri Pataskar: My point is that there are other clauses in the Bill which also refer to the Schedule. The Schedule only mentions "Class I and Class II". Of course, the Schedule may take sometime and the necessary time for it may be allowed, but the other clauses may not he held over till we come to the Schedule.

Mr. Speaker: Is the Schedule dependent upon any clauses other than clauses 7 to 10?

Shri Pataskar: Some other clauses also are connected with it.

Shri N. C. Chatterjee (Hooghly): If you look at clause 8, you will find that it is inextricably linked up with the Schedule. Clause 8 says:

> "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;" and so on.

Therefore, they are all to be discussed together.

Mr. Speaker: I am only asking the hon. Minister whether the Schedule depends upon any other clauses also, other than clauses 7 to 10. If it depends only upon clauses 7 to 10, including clause 8 which Shri N. C. Chatterjee

just read out, and if it does not depend upon any other clauses—clauses 13 to 15 and 16 and 17, we can take up the Schedule along with clauses 7 to 10.

Shrimati Renu Chakravartty (Basirhat): The Schedule has relation to many other clauses as well. For instance, we have already dealt with clause 6. There also, the Schedule came in.

Mr. Speaker: I want to know whether clauses 13 to 15 and 16 and 17 depend upon the Schedule. About clauses 7 to 10, it is agreed that the Schedule comes in there.

Shri S. S. More (Sholapur): Is it not the practice that we do not take up the Schedules, irrespective of the fact that there is an organic connection between the clauses and the Schedules or not, till all the clauses have been disposed of? That has been a matter of so many rulings.

Shri Altekar (North Satara): The Schedule is connected with clause 11 also.

Shri S. S. More: We cannot anticipate whether any amendments to the subsequent clauses will affect the Schedule or not. So, if we dispose of the Schedule at this stage, complications will arise.

Shri Pataskar: My friend Shri N. C. Chatterjee pointed out clause 8 as having relation to the Schedule. I do know that there is a reference to the Schedule in clause 8. At the same time, I am agreeable to your view that the Schedule may be taken into consideration earlier, and whatever changes ought to be made there, may be made. But that need not prevent us from disposing of clauses 7 to 10. In clause 8(a), it is said:

> "firstly, upon the heirs, being the relatives specified in class I of the Schedule";

So, all these matters will be considered. But we need not hold over those clauses till the consideration of the Schedule.

Shrimati Renu Chakravartty: Clauses 11, 12 and 13, are all concerned with the Schedule.

Mr. Speaker: Clauses 11, 12 and 13 also refer to the Schedule, and clause 11 primarily refers to class II of the Schedule. So, if it is the general impression that clauses 7 to 10 need not take two hours, we can reduce it to one hour and add the remaining one hour to the Schedule. So, clauses 7 to 10 will take up one hour. Let the hon. Minister refer to all the clauses in this group and the amendments thereon. I will put these clauses separately and the amendments separately to the vote of the House, because we have fixed one hour for all of them together.

Clause 7.—(*Devolution of interest in the property of a* tarwad *etc.*)

Shri Pataskar: I think clause 7, as a matter of fact, is almost the same as clause 6, with the difference that it applies only to *Marumakkattayam* and *Aliyasantana* and *Nambudri* laws. So, I think clause 7 may be put separately. It would not take much time also.

Shrimati Renu Chakravartty: Even during the discussions of the Joint Committee, this portion about the *marumakkattayam, aliyasantana* or *nambudri* law was held over till we were quite sure as to what would be the final form of the Schedule, because if the Schedule is again changed, the present law will go against the present *marumakkattayam* system as far as the daughters are concerned. If we change it now and then again change the Schedule, it is not clear how we can get over this difficulty.

Mr. Speaker: If this clause is passed, the Schedule will be changed accordingly.

Shri Damodara Menon (Kozhikode): I would like to know whether the Minister is moving his amendment to clause 7.

Shri Pataskar: It is not an amendment; I am only putting it in a slightly different way. I will explain the change I have made very briefly.

I have found by experience and also from representations received, that in respect of *aliyasantana* law, the principle is the same, but the wording should be slightly different. Clause 7 refers to *marumakkattayam, aliyasantana* and *nambudri* law. When it refers to *tarwad, tavazhi, kutumba, kavaru* and

[Shri Pataskar]

illom, tarwad, tavazhi and *illom* are in respect of the *marumakkattayam* and *nambudri* law and *kutumba* and *kavaru* are in respect of *aliyasantana* law. Apart from the principle involved, there is this difference that in respect of *aliyasantana* law, even after the division, still the *kutumba* or *kavaru* has got some rights over the divided property. Therefore, I found it necessary to separate *marumakkattayam* and *nambudri* law from *aliyasantana* law. What I have done is this. I have given the formula with respect to the *marumakkattayam* and *nambudri* law and again I have repeated the same formula with a slight difference with respect to the *aliyasantana* law. I have put them separately in order to indicate clearly the slight points of difference between the two, so that there may be no confusion. Otherwise, the principle involved and all the other things are the same. I felt that it would not be proper to lump *kutumba* and *kavaru* along with the others. I myself have examined and I have felt that it is much better to separate them. There will be no change with respect to the *marumakkattayam* and *nambudri* law. But with respect to the *aliyasantana* law, there will be this change. After the word *kavaru*, I have introduced the words *santhathi kavaru or nissanthathi kavaru*, because the rights are different. It is only a verbal change.

If necessary, I will read out the amendment.

Mr. Speaker: It is a long one.

Shri N. C. Chatterjee: I am speaking subject to correction by the hon. Minister, I find that the same system known as *marumakkattayam* which prevails in South Kanara is known as *aliyasantana*. That is what Justice Chandrasekhara Iyer has said in his latest edition of *Mayne's Hindu Law*. I want to know whether there is any difference.

Shri Pataskar: I was also under that impression; but, when I began to receive representations from the *aliyasantana* people, I came to know that there was some difference between their law and the *marumakkattayam* law. In respect of Mitakshara law also, there have been so many Acts passed by different States. There are Acts passed by the Madras State, by the former Travancore State, by the Cochin State and so on. So, after examining all of them, I have found that there is slight difference between *aliyasantana* and *marumakkattayam* law. In the *aliyasantana* law, even if there is a division of property, if a man gets divided in the interests of a *kutumba* or *kavaru*, still the *kutumba* or *kavaru* retains certain other powers even in the divided property. Therefore, instead of the word "interest" I have put the words "undivided interest". That is the change which I have thought of. There is one other thing also. In *kavarus*, there are *santhathi kavarus* and *nissanthathi kavarus*. With respect to *nissanthathi kavarus*, some of the males are in the same position as the widows or limited females on our side. Therefore, in order to avoid any confusion that may arise, I have separated *aliyasantana* law from *marumakkattayam* and *nambudri* law. With respect to *marumakkattayam* and *nambudri* law, there is no change. I have already described the changes that I have made with respect to *aliyasantana* law. I may tell the House that I was also under the same impression as my hon. friend, Shri Chatterjee; but, when I received representations from the various people, I myself went to all those places and I came to know of the slight difference. I also received representations from the different Bar Associations. After taking into consideration all those facts, I have made the changes I have described. I do not think there will be any objection to them.

Mr. Speaker: If the hon. Minister kindly looks into his draft, he will find that the heading "Devolution of Interest in the property of a *tarwad, tavazhi, kutumba, kavaru* or *illom*" appears after "7(1)". This heading should appear in the margin, because it applies to both the sub-clauses (1) and (2).

Shri Pataskar: Yes, Sir. I agree to it. I beg to move:

Page 5—

for lines 1 to 18, *substitute*:

Devolution of interest in the property of a *tarwad, tavazhi, kutumba, kavaru* or *illom*.

"7(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad, tavazhi* or *illom*, as

the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad, tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad, tavazhi* or *illom*, as the case may be that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad, tavazhi* or *illom*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law, applicable to him or her. and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru* (whether a *santhathi kavaru* or a *nissanthati kavaru*), as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be under this Act and not according to the *aliyasantana* law.

Explanation.—For the purpose of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyansantana* law, and such share shall be deemed to have been allotted to him or her absolutely."

Instead of the words "at the time of his death..." as found in the existing sub-clause 7(1), I have substituted "at the time of his or her death...". I have added the words "or her", because women are also in the same position. I have already explained how I have separated the *aliyasantana* law. Here also it is the same as before, but instead of "interest" I have said, "undivided interest"; I have explained the reason for this change already. I have put in both *santhathi kavaru* and *nessanthathi kavaru* because their rights are different. I have discussed this with the law authorities in those places before I put it.

Explanation.—For the purpose of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be..

It is the same Explanation. There is no change. I need not read it. I have kept the same wording. I have separated *aliyasantana* on the one hand and *marumakkattayam* and *nambudri* law of the other. I think there should be no objection to this.

Shri Damodara Menon: I think this clause may be accepted with the amendment suggested by the hon. Minister. Regarding the point raised by Shrimati Renu Chakravartty, it is true that it may be necessary for us to amend clause 19 of this Bill if there is any amendment to the Schedule. I hope the hon. Minister will consider that at that time. As I stated some time before when actually an amendment was made in the Rajya Sabha to the Schedule, it became necessary for us to have a corresponding amendment, that is, to clause 10 here which would apply to the line of succession to intestate property according to the *Marumakkattayam* law. Therefore, on the assurance of the Minister that if there is going to be any kind of amendment to the Schedule, suitable amendments will be made with regard to the line of succession under the *Marumakkattayam* law, we can pass it. There is no objection.

Shrimati Renu Chakravartty: Could we have a reply from the hon. Minister? Otherwise, what happens is.....

Shri Pataskar: I was under the impression that what Shri Damodara Menon has said was convincing. The fact is that there would be no change so far as clause 7 is concerned. If there is some change in the Schedule, as the hon. Lady Member knows, we have clause 19 containing special provisions respecting persons governed by *Marumakkattayam* and *aliyansantana* laws. Under those terms, the mother has got a peculiar position. Because we found that in the Schedule as passed by the

[Shri Pataskar]

Joint Committee, the mother could not get the place which according to their sentiment she must have. Therefore, we made that change. I still believe that if subsequently in the schedule the mother is restored, we may have to make a special change in clause 19. I do not anticipate anything at this stage. So far as clause 7 is concerned, there is no difficulty whatever the fate of the Schedule.

Mr. Speaker: Merely because these clauses are passed, it is not necessary to amend the Schedule. The Schedule can be modified by a suitable amendment if necessary.

Shri Pataskar: Clause 19 is made specially for these people. If there is a change in the Schedule, we will have to make some change in clause 19. So far as this clause is concerned, there is no difficulty.

Mr. Speaker: When we come to clause 19, we will hold it over until after the Schedule is over.

I shall now put the amendment to the House with this change that after clause "7" and before "(1)" the title will come, namely *Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom.*

The question is :

Page 5, *for* lines 1 to 18 *substitute* :—

Devolution of interest in the property of a *tarwad, tavazhi kutumba, kavaru* or *illom.*

"7. (1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad, tavazhi* or *illom,* as the case may be, his or her interest in the property shall devolve by the testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad, tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwar, tavazhi* or *illom,* as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad, tavazhi* or *illom,* as the case may be then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law, applicable to him or her and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru* (whether a *santhathi kavaru* or a *nissanthathi kavaru*), as the case may be his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—for the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be the share in the property of *kutumba* or *kavaru,* as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru,* as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely."

The motion was adopted.

Mr. Speaker: The question is :

"That clause 7, as amended, stand of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clause 8.—(*General rules of succession in the case of males*)

Mr. Speaker: If the Government has got any amendments to any of these clauses, they may be taken up first.

Shri Pataskar: No amendment.

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

(i) Page 5—

after line 38, *add* :

"Provided that a widow or widows mentioned in the Schedule upon whom the property is devolved according to clauses (a) and

(b) above, shall cease to have and right in it if she remarries."

(ii) Page 5—

omit lines 39 to 42.

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

Page 5—

after line 36, *insert* :

"Provided that a widow who had deserted her husband shall be disqualified from inheriting his property."

Mr. Speaker : Amendments moved :

(i) Page 5—

after line 38, *add*:

"Provided that a widow or widows mentioned in the Schedule upon whom the property is devolved according to clauses (a) and (b) above, shall cease to have any right in it if she remarries."

(ii) Page 5—

omit lines 39 to 42.

(iii) Page 5—

after line 36, *insert* :

"Provided that a widow who had deserted her husband shall be disqualified from inheriting his property."

Pandit Thakur Das Bhargava (Gurgaon) : May I make a submission? Yesterday the question was, how much time may be allotted for the Schedule. We agreed that to the Schedule as well as clauses 7 to 10, four hours will be devoted. Now, if you will take up clauses 8 to 10 with the Schedule, it will be much more convenient because clause 8 has reference to the Schedule. Without the Schedule, the discussion of clause 8 would be meaningless.

Mr. Speaker : I may say for the benefit of the hon. Member, it was suggested that clauses 7 to 10 may be taken up along with the Schedule and four hours allotted. It was also expressed on the floor of the House that the other clauses 11, 12, etc. also have reference to the Schedule, and therefore, the Schedule may be taken up separately, and that instead of two hours allotted originally for clauses 7 to 10, one hour may be devoted for this group and the remaining one hour added on to the Schedule: three hours for the Schedule alone. We have passed clause 7. We are on clause 8. If Pandit Thakur Das Bhargava has any amendment, he may move.

Shri H. G. Vaishnav : My first amendment to clause 8 is No. 67. It is, I think, a very important amendment. Clause 8 relates to general rules of succession in the case of males. In that clause, there are provisions (a) to (d). My amendment No. 67 is regarding the insertion of a new proviso after line 38, that is, after sub-clauses (a) and (b). Under sub-clause (a) it is said that after the death of a male holder, the property shall devolve firstly upon the heirs being the relatives specified in class I of the Schedule. When a male dies, the class I heirs succeed. Secondly, if there is no class I heir, then sub-clause (b) says it will devolve on heirs being the relatives specified in class II of the Schedule. This is the order of succession under clause 8 in regard to succession of males.

Mr. Speaker : The substance may be put to the House.

Shri H. G. Vaishnav : My submission to this. In this Schedule, in the heirs mentioned in classes I and II, there are three widows in class I, widow of the person dead, widow of a predeceased son and widow of a predeceased son of a predeceased son, and two in class II. My amendment is that when these widows succeed, they will succeed not according to the present law, that is, having a limited interest in the property but as provided in clause 16 of this Bill, that is, the widow or any female heir succeeds to the property will have an absolute right in the property. So, under clause 8, whichever widow succeeds, she will be an absolute owner of the property. But what happens if any of the widows who succeed re-marries?

12 NOON

Pandit C. N. Malviya (Raisen) : There is clause 26.

Shri H. G. Vaishnav : My hon. friend suggests that there is clause 26, but that clause only suggests that if at

[Shri H .G. Vaishnav]

the time of the inheritance she has re-married, she will not succeed. Clause 26 reads like this :

> "Any heir who is related to an intestate as the widow of a predeceased son, the widow of a predeceased son of a predeceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried."

Mr. Speaker : There is no doubt in the Bill about that. The object of the Bill is that if a widow succeeds, she ought not to be divested merely because she marries again. If on the date of the succession opening she has already married, she will not succeed. The hon. Member now wants to say that the widow who has succeeded should be divested of the property if she subsequently marries. But there is no doubt about it in the Bill. The only question is whether the House is willing to do it or not. Therefore, it need not be laboured. The simple point is this.

Shri H. G. Vaishnav : Clause 26 says that she is not entitled to succeed if she is married on the date of succession, but after getting the estate if she re-marries, what is to happen? The property will be hers by absolute right. She will take it and go out of the family, and it will create a rather anomalous position so far as joint property is concerned and also other classes of property. It is against the principles of Hindu law and against our notions of morality of the society that a widow may re-marry and take away the property. There may be a second marriage, a third marriage, any number of marriages, and the property will accumulate with the widow.

Pandit K. C. Sharma (Meerut Distt. South) : What about the son?

Mr. Speaker : Any person she marries must be another person.

Shri H. G. Vaishnav : Of course, she may go on marrying, but what will happen to the property? If the daughter-in-law, who is a widow, re-marries, of course, the property of the family will go with her to another family.

Mr. Speaker : What happens to the jewels given to her?

Shri H. G. Vaishnav : Sometimes they remain with her, sometimes with the family members. That is according to the circumstances that may be existing in the family.

This is a clear instance of giving licence to young widows. If, unfortunately, they are widowed in their younger age, or at the instance of some wicked persons, they may go on doing this and of course taking the property without any protection to the family property and even without any protection to the morals of society. I think there should be some provision in this law in respect of such widows re-marrying and taking away the property with absolute right. In the interests of justice and morality of society, the property should not go with them, but should be reverted to the family. That is why I have given my amendment No. 67 which reads :

> Page 5—
>
> *after* line 38, *add*—
>
> "Provided that a widow or widows mentioned in the Schedule upon whom the property is devolved according to clauses (a) and (b) above, shall cease to have any right in it if she remarries."

That is a simple provision which is good in every respect. If there had been any other provision like this I would not have given this amendment, but I see no provision anywhere. I therefore request that the hon. Minister may accept this amendment or make any other provision in this regard.

Mr. Speaker : Shri Dabhi.

Pandit Thakur Das Bhargava : I have also given notice of amendment No. 180. It is in regard to this clause, but the subject-matter is the same. It is for insertion of a new clause 17A.

Mr. Speaker : We will come to it later.

Pandit Thakur Das Bhargava: If this is disposed of here, then there is no chance of its being taken up later.

Shri Pataskar : Let us see what happens to this.

Pandit Thakur Das Bhargava : This matter may be discussed when my amendment comes, or I may be allowed to move my amendment.

Mr. Speaker: I will treat it as moved to clause 8. The amendment reads thus:

Page 8—

after line 10, *insert*:

"17A. The properties inherited by unmarried females shall revert back on the date of their marriage to the heirs of the person from whom they were inherited as if that person, died on the date of marriage and the properties inherited by widows shall revert back on the heirs of the person from whom they were inherited as if that person died on the date of re-marriage."

Shri C. C. Shah (Gohilwad-Sorath): That is a much wider amendment than the present one. It will also embrace unmarried daughters.

Pandit Thakur Das Bhargava: It embraces both. The principle is the same.

Shri N. C. Chatterjee: He should not say "embraces unmarried daughters"!

Shri Dabhi: My amendment is No. 1 which reads:

Page 5—

after line 36, *insert*:

"Provided that a widow who had deserted her husband shall be disqualified from inheriting his property."

Shri N. C. Chatterjee: How can a widow desert her husband?

Mr. Speaker: The intention is clear. A woman who has deserted her husband shall not inherit his property.

Shri Dabhi: If we read the clause along with the Schedule, Class I, we find that if a male Hindu dies intestate, the widow along with the sons would be simultaneous heirs. In certain cases the woman might have deserted her husband, and might have been living apart from her husband. In such circumstances she should not be allowed to inherit the property of her husband.

Shri C. C. Shah: For whose fault?

Mr. Speaker: Is there any definition of "desertion" here? How long?

Shri Dabhi: Under clause 17 also where the husband is a heir to the wife along with his sons and daughters, he might have deserted his wife and I want that man also should not be allowed to inherit the property of his wife. I want to put both of them in the same category.

Shri Pataskar: In many cases it will be difficult to know who has deserted whom.

Shri Dabhi: Under clause 25 you will see provision has been made for a woman who has been deserted by her husband. I do not think anybody would think that after the passing of this Bill there will not be cases in which the husband might desert the wife. I do not understand why a man who has deserted his wife should be allowed to inherit the property of his wife. In the same way, a woman who has deserted her husband should not be allowed to inherit his property. I want to place both on an equal footing. There are several cases where women have been deserted by their husbands. Otherwise, we would not have been inclined to make the provision in clause 25 itself.

I do not see what difficulty there can be in accepting my amendments. Just as a man who has deserted his wife should not be allowed to inherit the property of his wife, likewise, a wife who has deserted her husband should not be allowed to inherit the property of the husband.

If both these amendments are accepted, then they would give more benefit to women than to men, because there are many cases of women being deserted by their husbands. So, I do not think there will be any difficulty in accepting my amendment to this clause. I do not say that only my amendment to clause 8 should be accepted. My amendments to clause 8 as well as clause 17 may both be accepted, so that men as well as women would be put on an equal footing.

I should like to know from the Minister whether he is accepting these amendments, and if not, the reasons why he is not prepared to accept them.

Shri Seshagiri Rao (Nandyal): On a point of information. In the discussion on clause 8, some of the amendments to clause 17 also are being discussed. Are we to discuss them now or when we come to clause 17?

Shri Dabhi: I merely referred to my amendment to clause 17 to show that I wanted men and women to be placed on an equal footing.

Mr. Speaker: The hon. Member merely made a reference to it.

Shri S. S. More: My amendment No. 215 is similar to the amendment No. 68 moved by Shri H.G. Vaishnav. By this amendment I desire the omission of sub-clauses (c) and (d) from clause 8. This clause lays down the order of succession, and provides which person shall be entitled to succeed. Besides the heirs mentioned in class I and class II of the Schedule, there are agnates and cognates who are also qualified to succeed to the deceased in the absence of the persons mentioned in the Schedule. I object to extending the line of succession so far as that, because our State is developing into a welfare State.

Mr. Speaker: Cognates and agnates are generally mentioned here. Is there any restriction on the number of degrees?

Shri S. S. More: Yes. That is laid down in clause 15. Clauses 12, 13, 14 and 15 refer to the agnates and cognates.

Mr. Speaker: True. Does the hon. Member's amendment seek mere omission of this or taking it to the *sapindas* and *samonodakas*?

Shri S. S. More: I propose absolute omission of it. I along with Pandit Thakur Das Bhargava, want to allow succession only to the heirs mentioned in the Schedule.

Mr. Speaker: Or escheat.

Shri S. S. More: In class I of the Schedule, 11 heirs are mentioned, and in class II, 21 heirs. So, the total number of heirs comes to 32. That is a sufficienly exhaustive list to see that no property of the deceased remains hanging in the air without a proper successor.

My submission is that by clause 31 we are allowing the State to step into the shoes of the deceased, if all the heirs mentioned in the Schedule are exhausted, for clause 31 reads :

> 'If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall go to the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.'

My submission is that when the State assumes the role of a welfare State, it will have to look after so many other matters which ordinarily in a non-welfare State are looked after by the heirs of the deceased, so to speak, and the property is supposed to go to them because the property is supposed to be an undilutedly of an individual, to which his successor, howsoever distant, is entitled to succeed. Now, the welfare State is assuming so many responsibilities, and is playing the part, in many cases, of a loving father a loving mother, or any other good relation, who is trying to support any other poor relation. If that is the role which our State is going to assume and play effectively, then I submit that such properties, where there is no heir coming under any of the thirty-two categories mentioned in the Schedule, ought to revert to the State.

My further argument is that persons are enabled to acquire property and hold that property, only because the State has made so many arrangements by way of granting security, or creating avenues for employment, and earning property. All these benefits conferred by the State must be requited, so to say, by the person, if fortunately or unfortunately, he has not left a particular heir coming under the different categories enumerated in the Schedule. In view of the changed role of the State and the great qualitative change that is likely to come on the modern State, it is necessary that we should allow the State to step in at an earlier stage than is visualised in this Bill.

I would say further that Government will find it convenient to accept this amendment of mine, in view of their declaration of socialistic pattern, for this amendment will enable them to bring about a rise in the standard of living of everyone. Further, if this amendment is accepted, we shall be in a position to give effect to some of the Directive Principles.

I may advance one other suggestion. Suppose Government create a fund in which all such properties shall be pooled together, and that fund is used for the purpose of giving help to dependent widows, or unprovided for widows, or for the education of orphans and such

other beneficial matters, then this will be a valuable source of income which will enrich that particular fund, and it will enable the State to discharge its responsibility in this regard very effectively. Otherwise, our Directive Principles will merely have to remain in the Statute-book as a promise, without being implemented for a very long time. So, I would commend this particular amendment of mine for the acceptance of the House.

I may be permitted to say a word about the proposal of my hon. friend Shri H. G. Vaishnav. He is assuming and indulging in some extreme assumption that a lady will be a widow first, then she will get property, and then his suggestion was—though he did not say so directly—that the widow will always be going after a new husband like a bee going after a honeyed flower. That is a wrong assumption. Marriage is not a matter of acquiring property, and going after a successive chain of husbands in search of property. I think that will be an unfair assumption towards our womanhood. They will not be property-seekers in this particular way that my hon. friend suggests.

Mr. Speaker: Why should she not marry?

Shri S. S. More: She may marry.

Mr. Speaker: She can marry under another law, which has been there on the statute-book for nearly a hundred years.

Shri S. S. More: It is my objective, and I do support the idea that the Widow Remarriage Act should be properly implemented, if the widow is of a proper age.

Mr. Speaker: The only point is.....

Shri S. S. More: ..... whether she will be going after remarriage for the sake of property.

There is another difficulty. Suppose a widow gets the property of her husband, and then she intends to remarry. And suppose the provision recommended by my hon. friend is accepted. Under the shortest cut and the expert legal advice offered by my hon. friend and myself, she can dispose of that property, pocket the money, and then deposit it somewhere in such a manner that it cannot be easily traced, and then go after a new husband. So, I would submit that such a provision is very difficult to implement.

In view of all these difficulties, I would strongly oppose the suggestion made by my hon. friend, and at the same time, I commend my amendment No. 215 for the acceptance of the House.

Shrimati Jayashri (Bombay-Suburban): I entirely agree with my hon. friend Shri S. S. More, and I oppose the amendment of my hon. friend Shri H. G. Vaishnav. If it is to be provided that a widow who remarries shall not inherit the property of her husband, then what would happen in the case of a man who wants to marry again after he has become a widower?

Mr. Speaker: Has the hon. Member got any amendments?

Shrimati Jayashri: I have got two amendments in my name, namely amendments Nos. 7 and 8.

I beg to move:

(i) Page 5, line 40—

for "of the deceased" *substitute* "related to the deceased within five degrees".

(ii) Page 5, *for* lines 41 and 42, *substitute*:

"(d) lastly, if there is no agnate related to the deceased within five degrees then upon the cognates of the deceased within five degrees."

Just as my hon. friend Shri S. S. More has said, I would also say that we should restrict the number of agnates and cognates.

In the original Hindu Code Bill, the number was restricted to five degrees. I have moved amendment No. 7 with a view to effect this restriction.

Secondly, in view of sub-clauses (c) and (d), I do not see any necessity for keeping clause 12 and 13. I have today tabled two amendments to delete these two clauses.

Mr. Speaker: We will come to that later.

Shrimati Jayashri: I am suggesting that clauses 12 and 13 deal with the same matter; sub-clauses (c) and (d)

[Shrimati Jayashri]

cover these two clauses. So those two clauses may be omitted.

Mr. Speaker: Amendments moved:

(i) Page 5, line 40—

for "of the deceased" *substitute*: "related to the deceased within five degrees".

(ii) Page 5—

for lines 41 and 42, *substitute*:

"(d) lastly, if there is no agnate related to the deceased within five degrees, then upon the cognates of the deceased within five degrees."

Shri C. R. Chowdary (Narasaraopet): My amendment No. 37 is the same as the amendment No. 68 moved by Shri H. G. Vaishnav. About this matter, I have already expressed my views when I was speaking on clause 2 for omission of the definition of 'agnates' and 'cognates'. I hold the same views even today. But I see that my amendment is a bit drastic. As such, I feel that a *via media* may be adopted. I hope that the amendments moved by Shrimati Jayashri, Nos. 7 and 8, will be acceptable to the hon. Minister. These amendments seek to limit the right of inheritance to five degrees. If that is not the case, if all the agnates and cognates were to be excluded, probably, as you yourself expressed, the father's father's brother may be excluded or people of that type may be excluded. These amendments are a bit liberal and the hon. Minister may, in all fairness, accept them.

Then I come to the amendment moved by my hon. friend, Shri H. G. Vaishnav, No. 67. As regards divesting a woman of property when she remarries, Shri S. S. More has given his views. It is quite easy for her to dispose of the property and then remarry. If that is the case, it will not in any way improve the position of either the family or the person from whom she inherited the property. As such, it will be an inducement to everybody to dispose of the property first and then think of remarriage. That will be indirectly helping the parties to spend some money and enrich the exchequer. If that is the spirit with which that amendment is moved, I think there is every justification for it. But if my hon. friend's idea is to see that remarriage is discouraged, I oppose that spirit. If my hon. friend's amendment is accepted, possibly it will go to discourage remarriages. I think that is not the spirit with which we are passing this Bill and that is not in keeping with the spirit of the legislation that we have already passed. From that point of view, I oppose amendment No. 67.

Pandit Thakur Das Bhargava: I have moved amendments Nos. 180 and 215, the latter standing in the names of Shri S. S. More and myself.

Mr. Speaker: As regards amendment No. 180, I will treat it as an addition, an amendment to clause 8, so that it may be disposed of once for all.

Pandit Thakur Das Bhargava: I am speaking on both.

As regards amendment No. 215, since we are making a new law and we are departing from the previous notions of *pinda* and propinquity, we must look at it from the point of view which we adopt in this Bill. It is said that natural love and affection are the new bases for succession. If that is so, I have yet to see that any person who is dying or who had died had any affection for a person whom he might not have even seen. When we were debating the Bill in 1930, it was said that 214 persons preceded the sister before she became the heir. Then the law was changed in 1930 and the sister was accorded her proper place.

Now, I understand the number of agnates and cognates is innumerable, and the deceased may not have even seen them or known them. I do not see how natural love and affection can come in the case of those persons who are so remote.

I quite see that so far as the amendments of Shrimati Jayashri are concerned, she wants to limit the agnates and cognates to five degrees. I think it is the general view of the House that all the agnates and cognates should not be excluded, and this is a happy compromise. I would be rather happy if the hon. Minister accepts those amendments. At the same time, now I understand that the whole basis of this law is a little different. We are now moving towards a socialist pattern of society. We now say that nobody shall have large properties, and nobody who can succeed shall be debarred from succeeding. If that is the principle, I should

think that the place of agnates and cognates is nowhere to be found now. Therefore, it will be a very great help to the Union Treasury if this Bill is passed. This will be in the nature of an auxiliary to the Estate Duty Act. Under that Act, only the rich people are mulcted. Now, in regard to this, such a large amount of property will come into the hands of our Government that they will be able to find money for all their plans and implementation of directive principles, if they succeed to this property. Nobody's expectations will be disappointed. I therefore think that it is better to give a short shift so far as this relationship in connection with Hindu joint Family property is concerned, and to reach our goal more readily and more expeditiously.

Regarding amendment No. 180, I have to submit that in regard to unmarried daughters when they succeed, the succession should revert after their marriage. In regard to widows, when they remarry, the property should come back to the heirs of the husband.

Shri A. M. Thomas (Ernakulam): So that once vested, it becomes divested.

Pandit Thakur Das Bhargava: Exactly. This principle, 'once vested cannot be divested,' is of rather doubtful origin. So far as the Hindu law is concerned, there are many cases. What happens when a child is in the womb? When born, he takes his share and the succession is ante-dated. There are many other cases. It is not such a rule of universal application or undoubted value that we must accept it. On the contrary, if you kindly see the present law, as it is observed in the Punjab, and perhaps other places, even today if a widow remarries, her property is forfeited. Even today it is the law, and since times immemorial this has been the law. As soon as a widow remarries, her property reverts to the heirs of the husband.

Shri S. S. More: Is it recognised by judicial authorities?

Pandit Thakur Das Bhargava: It is recognised. It is the custom and it has been there from times immemorial. Even today we are observing this rule.

Shri S. S. More: If it is a limited estate, it may revert back.

Pandit Thakur Das Bhargava: It may revert back.

You must look at the question in another way. Today what will happen in the Punjab as a result of this? It means that the widow who has got a limited estate will get the full estate. But what is the position of a male relative, an ordinary man, the son in an ordinary family, not a Mitakshara or coparcenary? Today, the father and the son are debarred from alienating their ancestral property, whether they live jointly or not. A widow is also debarred from alienating her property; only for purposes of legal necessity can the widow dispose of the property. The result of this would be, when you make the property of the widow absolute, I should say absolutely absolute, she gets much more rights in the property than a man has got today, either as a coparcener or as an ordinary person in Punjab. My friends are not visualising that. In our attempt to arrive at equality, we will be perpetuating inequality. The ladies will get much more rights than others. I am agreed that they may be brought on a par and let them be given exactly those rights which a male gets. They do not claim more but yet you are going to give them more. This is an anomaly.

Shri A. M. Thomas: Does the hon. Member mean to say that the Hindu male in Punjab gets lesser rights than the female?

Pandit Thakur Das Bhargava: It will be so when the Bill is passed. Today it is not so. Today, the widow cannot part with the property unless for legal necessity.

Shri S. S. More: I am astonished at this view that she cannot alienate the property when it is absolute property under the Hindu law; I can understand agricultural estates under some other provision of law not being capable of alienation.

Mr. Speaker: It is a custom whereby during the lifetime of the father, the son cannot have even partition. Custom overrides law.

Pandit Thakur Das Bhargava: Today in the whole of India a coparcener cannot sell his property.

Shri S. S. More: He can sell his interest.

Pandit Thakur Das Bhargava: He cannot sell his interest without legal necessity.

Shri C. R. Chowdary: A coparcener can validly transfer his property or interest.

Mr. Speaker: The Madras High court has held so.

Pandit Thakur Das Bhargava: In some parts of India, I think, in Bengal and Bombay, it is not the rule. It is not the law in Punjab also. Shri C. C. Shah also gave some reference to this and he also said that the coparcener cannot transfer or dispose of his property—the share in the coparcenary property. This is the view in Bombay.

Shri Altekar: In Bombay a coparcener can alienate his interest in the property. That is the law obtaining in Bombay. It may be different in Madras.

Shri Gadgil (Poona Central): His undivided share can be sold.

Pandit Thakur Das Bhargava: I know what is happening in Punjab. If the father has got ancestral property, he cannot dispose of it if he has got sons or even relations up to the 5th degree.

The result of this will be that if a daughter gets property under this, she will be able to dispose of that property to whomsoever she pleases. It means that she will get much more rights than an ordinary person in the Punjab.

What I was submitting was that, as a matter of fact, you will be changing this law of the Punjab. I do not know what is the position under the Hindu Widow Remarriage Act. I have just got a copy of it.

Shri N. C. Chatterjee: I will deal with it.

Pandit Thakur Das Bhargava: Section 2 of the Act reads thus:

> "All rights and interests which any widow may have in her deceased husband's property, by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband or other persons entitled to the property on her death, shall thereupon succeed to the same."

This is the law so far as the whole of India is concerned, I think.

Shrimati Renu Chakravartty: That is limited estate.

Pandit Thakur Das Bhargava: It is clear that in the Punjab, as soon as a widow remarries, she forfeits her right to the previous husband's property. There is nothing new which we are propagating.

Look at it from another standpoint. Supposing a girl of 16 or 17 becomes a widow. Ordinarily, when such a calamity befalls her she is likely to remarry. There is no reason why she should not. Supposing, she had one child by the previous husband and the husband died, when she was 16 or 17. She remarries and other sons are born.

Shri N. C. Chatterjee: I am reading from Mayne. The Act provides that all rights and interests shall thereupon cease and determine on her remarriage as if she had then died.

Mr. Speaker: Which section?

Shri N. C. Chatterjee: Section 2; Hindu Widow Remarriage Act [Act XV of 1856]

Mr. Speaker: I thought he was referring to the Hindu Women's Property Act.

Pandit Thakur Das Bhargava: According to this law and the custom in Punjab, the present position is that a widow loses her rights in the previous husband's property if she remarries.

I was referring to an example of a widow of 16 or 17 remarrying. Supposing she does not remarry but there is unchastity etc. and there are illegitimate children. According to the provision that we have already passed, those illegitimate children will succeed along with the child from her previous husband to the property. This is what we have passed.

We have passed some time ago a marriage law. In that we have provided that when there is a divorce, then alimony for the whole of her life should be given if the judge so orders. We had also said that if it is proved that she

was unchaste, then, in that case, her right to alimony was to be forfeited. In regard to a woman who has earned a divorce, you have said that because of unchastity, or under certain circumstances, the right to alimony or the right to maintenance will cease and also on remarriage. So, on remarriage, the right to maintenance ceases but yet the property itself is with her. When you have accepted that in the case of the marriage law, my humble submission is that on the question of property also this must apply. Having accepted that principle in the marriage law, how can we get over it? It is very natural if you consider that the property belongs to a certain family and if you get away from that family, if you get away from all those ties....

Mr. Speaker: But there is the practical difficulty. If you confer absolute right on the widow, then it becomes her absolute property. She can will away that property or give it away on the eve of remarriage, or sell it away. How are you going to prevent it?

Pandit Thakur Das Bhargava: I understand this; my friend has pointed out the difficulty. But, is not the same difficulty there when you give the property to the daughter and the power to the father to will away coparcenary property? The same thing will happen. In many cases, it may happen; in many cases, it may not happen. She may not part with the property; she may not sell the property and yet remarry. Or, I go a step further and....

Mr. Speaker: She may make a gift of the property to the prospective husband and then remarry.

Pandit Thakur Das Bhargava: It may be so. I was just coming to that. As a matter of fact, I was just considering that. Supposing, instead of selling she makes a gift of it to the prospective husband. So far as that is concerned, it is clear that other persons will be able to contest the transaction....

Shri S. S. More: Under what conditions?

Pandit Thakur Das Bhargava: Under the provisions you make here you may say that her property shall be absolute and you are actually giving such powers to the female. But, I do not think it is right.

Shri S. S. More: Transactions to defraud creditors may be challenged by the creditors; but, here, nobody can challenge.

Pandit Thakur Das Bhargava: Today, supposing a woman makes a transfer of her husband's property, the reversioner of her husband would bring in a suit and get it set aside.

Mr. Speaker: It is because she has no absolute property.

Pandit Thakur Das Bhargava: I am, therefore, saying that you should give her only such property as is enjoyed by a male. If the property is self-acquired, she may dispose it of as she pleases.

Shri C. R. Chowdary: I want to know how a suit can be filed for setting aside the transaction when she has absolute right to dispose of the property.

Pandit Thakur Das Bhargava: I am coming to the point but my friend is not appreciating it. It is the point that I said yesterday and the day before.

Shri C. R. Chowdary: I am sorry he has not expressed it.

Pandit Thakur Das Bhargava: Even if I did not express it ....

Shri S. S. More: All this is relevant under clause 16.

Pandit Thakur Das Bhargava: My amendment is No. 180 and I am speaking on it. I do not know how all this is not relevant here. The subject matter is there, of course. Here also, on remarriage, she should forfeit her property. This is a complete scheme. By virtue of her marriage, she goes into another family. Similarly, when an unmarried daughter marries, I want her property to revert back. This is a complete scheme. You may accept it or not, but it is completely logical and understandable.

Mr. Speaker: Would you put a limit on the number of years during which she should remain unmarried?

Pandit Thakur Das Bhargava: There are flaws in every possible thing. You have not yet invented a flawless Bill. I can find twenty flaws in every clause of this Bill, I do not say that this provision is such that there can be no criticism. I submit that this is in consonance with our past law and we should not rend asunder all our past connections by this Bill.

Shri N. C. Chatterjee: Due to the great efforts of the social reformer, Ishwar Chandra Vidyasagar, in 1856 the Widow Re-marriage Act was enacted, and that was a great step forward. Independent of that Act there are thousands of widows who got married in this country and are still getting married under local law or customary law. This has also happened in my part of the country among Vaishnavas and other castes although our law forbids re-marriage of widows. Mayne points out—

> "In all cases, whether it was permitted by usage or otherwise, second marriage entailed the forfeiture or divesting of the widow's estate, either as being a signal instance of incontinence, or as necessarily involving degradation from caste. Remarriage of widows is now legalised in all cases by the Hindu Widows' Remarriage Act (XV of 1856). But the Act provides that all rights and interests which a widow may have in her deceased husband's estate shall cease and determine on her remarriage as if she had then died.'

In *1 Madras 226,* which was decided in the year 1877, it is stated—

> "Even where widows are by custom of the caste entitled to remarry, the estate vested in a widow will terminate on her remarriage. In *Murugayi* v. *Viramakali,* a case of a woman of the *Maraver* caste amongst whom widows could remarry according to the custom of the caste, it was held that as the principle upon which a widow takes is that she is the surviving half of her husband it cannot apply where she remarries and that the law will not permit the widow who has remarried to retain the inheritance. The same rule was applied to the remarriage of a Lingait Gounda woman who could remarry according to the custom of her caste."

In a later case also, the Chief Justice took the same view and held that a widow forfeits her estate on her remarriage. It is further stated there—

> "Accordingly, it is settled that where a widow remarries, whether by custom of the caste or by the enabling provisions of the Act, she forfeits, on her remarriage, her interest in her husband's estate."

There is a lot to be said in favour of that view. As you have pointed out and other hon. friends have also pointed out, it may be difficult to enforce it in some cases if you give them also the power of alienation. But assuming that it may be difficult in some cases to make it effective, on principle we are suggesting that in the Hindu Succession Bill, we should not jettison completely the essential and cardinal principle of our Hindu sociological and juridical system. I think it is perfectly legitimate, as suggested by my friend, Pandit Thakur Das Bhargava and others, that some such clause may be there. It may be true that in some cases it shall not operate and in some cases even the second bridegroom may not want an inheritance in this way.

Mr. Speaker: He must only be a Sukabrama rishi. If even one rupee is added to his property, who will refuse it?

Shri N. C. Chatterjee: It depends upon the depth of affection. It may be that he is not really wanting to inherit the property but something else. I am strongly opposed to Shri More's suggestion that sub-clauses (c) and (d) should be deleted from clause 8.

Mr. Speaker: What does the hon. Member say about Shrimati Jayashri's point? Even under the existing law, only *sapindas* and *samanodakas* can get.

Shri N. C. Chatterjee: At least *sapindas* and *samanodakas* have been included and they have been succeeding.

Mr. Speaker: Is there no limit set, say, five degrees or seven degrees for *samanodakas*?

Shri N. C. Chatterjee: You may put a reasonable limit and I am not objecting to that. Let us not turn the Hindu Succession Bill into a confiscatory measure. We have no business to say that under the garb of socialistic pattern of society, we shall utilise this kind of measure for the purpose of confiscation. Are we not confiscating more or less in this measure? Who are these *atmabandhus*? I am giving you only a few

instances—father's sister's son, mother's sister's son, mother's brother's son. Are these the people whom for years you have never seen in your life? Is not your mother's sister's son equal to your own brother? He is almost a first cousin. According to the notions in the part from which I come, they are *pisthutho bhai, masthutho bhai* and *mamatho bhai*. They are looked upon practically as members of the same family. Are you going to legislate that immediately after the first category is exhausted and the second category is exhausted, even if there is a maternal uncle, mother's sister's son or mother's brother's son, or father's sister's son, you will order escheat to the State because the State is going to be a welfare State? That will not be fair and that will be something which is not proper. I am, therefore, strongly opposing this. I am not saying that you should have it much larger. I know that with regard to *samanodakas*, the list is very wide. I am only saying that you should not accept Shri More's suggestions, because one Maharashtrian may accept another Maharashtrian's suggestion.

Shri Pataskar: There is no question of Maharashtrian in this matter at all.

Shri S. S. More: The Government of India will not look at Maharashtrians.

Shri N. C. Chatterjee: A man dies at the age of 60; do you expect his father to be alive then? Assuming it to be so, do you expect the father's mother also to be alive? Do not say that these classes will be exhaustive, and that if they are not there, the civilised principles should be adopted, and agnates and cognates should be ruled out. I think it will not be fair and you should not encourage this idea of turning this into a confiscatory measure.

Pandit Thakur Das Bhargava: Have it as five or seven degrees.

Shri N. C. Chatterjee: You can set some reasonable limit. Do not make *samanodakas* 117 in number, as under the present system. Limit it to reasonable proportions. You may accept the lady Member's suggestion or any other suggestion, but do not accept Shri More's suggestion.

Shrimati Renu Chakravartty: I am also of the opinion that the hon. Minister should accept the suggestion made by Shrimati Jayashri. It is true that we accept the principle of inheritance by kinship. The degrees of relationship which have been just read out by Shri Chatterjee are very close. So, we should not exclude them. I have no illusions at all that this measure is going to lead us towards socialist pattern of society. I have no illusions, as I said yesterday, that the Mitakshara daughter is going to get very much. We are going to fight to the last for absolute rights of whatever little she gets. There is no question of any compromise on that point. Pandit Bhargava was saying that up till now, the Hindu society, wherever it had granted women's right to property, had granted it on the basis of limited estate. Fortunately, Shri Chatterjee read out certain portions of legal judgments that is widows remarriage to explain the position as it was today. He said that a widow remarrying was considered to have debased herself and lost caste. Do we have that sane attitude towards widows remarrying? We do not and should not have that attitude? Yet although Ishwar Chandra Vidyasagar passed the law for widow remarriage years and years ago in the face of tremendous opposition, even today the widow hestitates to remarry. She does not remarry because of social ostracisation. Even young girls do not remarry. We know the amount of prejudice against her being married. Therefore there should be no question if she inherits the property, she should inherit it absolutely. As it is she will not be allowed to have that property when she remarries; it will again revert back to the original family. Only a very small fraction of ancestral property will devolve on the daughter. On the top of all that, in clause 17(2)(b), we say that any property inherited by a female Hindu from her husband or father-in-law shall devolve, in the absence of any son or daughter of the deceased, not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband. It is true that even after she marries a portion of her inherited property may devolve on heirs other than those who are within the family. I say that this portion will be very small and as such I think there is absolutely no case. There is this amendment of Pandit Bhargava. I can understand him. He feels that the property must remain within the family. Once we have broken with that idea and say that a daughter, in spite of the fact that she is going outside the family, has a right

[Shrimati Renu Chakravartty]

to inherit, we must also accept the position that she has a right to will it or do whatever she desires. She is the absolute owner of the property. As such, I oppose amendment No. 67 which has been supported by Pandit Bhargava.

Shri Pataskar: There are in my opinion two kinds of obsessions which are disclosed by the amendments moved. Shri Vaishnav wants that if a widow remarries she shall cease to have an interest. I think it has been sufficiently replied. Whatever may be the genesis, whatever may the right or wrong of the introduction of that principle in our Hindu law, I may point this out. Shri Chatterjee was not here when I pointed it out on the last occasion. When a similar measure giving the right to woman, specially widows, was discussed in this House in 1937, the late Shri N. N. Sarkar, and Dr. Deshmukh, who was in charge of that measure—made it clear that these were really foreign ideas. The Mitakshara originally did not have reference to limited estate. These are all foreign ideas. When we come to have some legislation about the family law, we shall see what to do about it. I fail to understand his idea. It was not proper on his part to have suggested that widow will go on remarrying and that she will have readily men available with property also. This is taking thing too far.

Mr. Speaker: One must first of all become a widow before remarriage. She must go on seeing that she becomes a widow. The husband must be able to accompany her. *(Interruptions)*

Shri Pataskar: Some people are obsessed more with property than with morals. He was all along talking about morals. I do not know what morals are contained in this suggestion. I think Pandit Bhargava's amendment is more or less on the same lines.

There was one point which he made. Probably, in Punjab Mitakshara customary law has made very great inroads. Whatever it is, if it needs any change, so far as the rights of the males in a Mitakshara family or a family governed by the customary law are concerned, we shall look into the matter when we come to the question of codifying the family law.

Shri Dabhi said that a wife who had deserted her husband in his lifetime, should she become a widow, should not be allowed to succeed to that property. The difficulty will be as to whether the husband had deserted her or she has deserted her husband. There will be all sorts of complications.

Mr. Speaker: Clause 8 only refers to a table showing the various persons. It is all defined later on in the clause. There is a disqualification clause also later on which says that if, on the ground of desertion or conversion or murder, this or that, some disqualification is entertained etc. That is the proper place to consider all these.

Shri Pataskar: I am on principle opposed to making all sorts of exceptions. Whether a husband deserted the wife or the wife deserted the husband, are all matters which have to go to the court. It has to decide who deserted whom and so on. *(Interruptions)*

Mr. Speaker: Order, order. My point is this. I am here to regulate and find out where a particular amendment can fit in. I have absolutely nothing to say against the substance. It is for the House to decide. But, these are all arguments against imposing disqualifications. There are clauses relating to disqualifications under certain circumstances. This clause only refers to a table which says that these are the heirs. These heirs are further referred to in the other clauses that come later on. So, that will be the suitable time to look into those matters.

Shri S. S. More: Shri Dabhi's amendment can be more appropriately considered with clause 26.

Mr. Speaker: This clause refers only to this: whether the agnates and cognates should be there or should not be there. If they are to be there, by what degrees should they be there? The other things do not fit into the picture here. Of course, we can take all these things and reject them or accept them if the House is willing.

Shri Pataskar: With respect to Shri More's suggestion regarding the omission of sub-clauses (c) and (d), he wants that the heirs should be confined to heirs mentioned in clauses (a) and (b). If none of them are there, then the property should go to the State. He said that this would improve the coffers of the State, and thereby he would advance the cause of socialist society. There are other friends like Shri Chatterjee, who

pointed out that the State should not look to having such resources of doubtful nature. (*An Hon. Member*: Why doubtful?) I feel doubtful.

Shri S. S. More: It will depend upon the character of the man and the State that he leaves.

Shri Pataskar: I believe that the State is not interested in getting revenues by such means. We have got ample powers at our disposal to get revenues, in a direct manner, from those who possess property. That is the best way to deal with it. Looking to the scheme of things, it was never our idea to proceed in an indirect manner and this view was shared by the Joint Committee which considered the matter.

1 P.M.

Shri S. S. More: What is the hon. Minister's reaction to Shrimati Jayashri's amendment?

Shri Pataskar: I am inclined not to accept any amendment to this clause for this reason that, if we make it five degrees, why should we not make it seven degrees.

Mr. Speaker: All that he thinks is that beyond a particular degree it may not be easy to prove.

Shri Pataskar: It is not going to be of much use and consequence one way or the other. It is a remote chance that this property will revert to Government and I believe that the Joint Committee after considering all this came to the conclusion, the Rajya Sabha debated it and passed it and I am not inclined to change it for no substantial reason. I would, therefore, appeal to hon. Members to accept the clause as it is. I am not questioning their motives, which no doubt are laudable. But at the same time I think the clause should remain as it is and it does not need any change.

Mr. Speaker: So far as amendment Nos. 1 and 67 are concerned, by Shri Dabhi and Shri Vaishnav, I think they are more appropriate to clause 16. Of course, enough has been said on this subject and when we come to that clause *viz.* 16, I do not propose to allow much discussion on it, except perhaps to give opportunity to one or two Members. At any rate they are not appropriate here under clause 8. So also amendment No. 180.

The other amendments are Nos. 37, 68, 215 which are the same. Is it necessary for them to be put to the vote of the House, as Government are not accepting them?

Shri S. S. More: They may be put.

Mr. Speaker: The question is:

Page 5—

omit lines 39 to 42.

The motion was negatived.

Mr. Speaker: So far as amendments Nos. 7 and 8 are concerned, need I put it to the vote of the House.

Some Hon. Members: Yes.

Mr. Speaker: The question is:

(i) Page 5, line 40—

for "of the deceased" *substitute*:

"related to the deceased within five degrees."

(ii) Page 5—

for lines 41 and 42, *substitute*:

"(d) lastly, if there is no agnate related to the deceased within five degrees, then upon the cognates of the deceased within five degrees".

Those who are in favour of the amendment will say "Aye".

Some Hon. Members: Aye.

Mr. Speaker: Those against will say "No".

Some Hon. Members: No.

Mr. Speaker: The 'Noes' have it.

Some Hon. Members: The 'Ayes' have it.

Mr. Speaker: Do they want to divide on this, because nobody is going to have evidence. No evidence will be let in after five degrees.

Shrimati Renu Chakravartty: Is it your contention that there could be no agnates and cognates after five degrees?

Mr. Speaker: There are, but it is difficult to prove.

Shrimati Renu Chakravartty: What I could make out from the various interpretations quoted by Shri Chatterjee is that there are long lists of people who do fall into that category.

Shri N. C. Chatterjee: It may be difficult in some cases, but it can be found out. Go to Mathura or Hardwar, you can find out all your cognates and agnates.

Mr. Speaker: I do not want the House to divide on this. I shall again put the amendments.

The question is.

Page 5, line 40—

for "of the deceased" *substitute*:

"related to the deceased within five degrees."

The motion was negatived.

Mr. Speaker: The question is:

Page 5—

for lines 41 and 42, *substitute*:

"(d) lastly, if there is no agnate related to the deceased within five degrees, then upon the cognates of the deceased within five degrees."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 *was added to the Bill.*

Clause 9.—(*Order of succession among heirs in the Schedule*)

Mr. Speaker: We have already taken more than one hour. We started at 11-30 and we must have finished clause 8 by 12-30.

Shri N. C. Chatterjee: This clause is the crux of the whole Bill.

Shri V. G. Deshpande (Guna): I beg to move:

Page 6, line 2—

after "simultaneously" *insert*:

"in the first three cases to the exclusion of the rest, and in the absence of the male, the females shall take simultaneously".

The first three cases are son, daughter and widow. Therefore if this amendment is incorporated the clause would read:

"Among the heirs specified in the Schedule, those in class I shall take simultaneously in the first three cases to the exclusion of the rest, and in the absence of the male, the females shall take simultaneously..... etc."

Mr. Speaker: What about the son of a predeceased's son? The son of a predeceased's son, the grandson of a predeceased's son, son's son's son are all entitled.

Shri S. S. More: He wants to exclude them.

Shri V. G. Deshpande: No. In the absence of the male the female shall take simultaneously.

Mr. Speaker: If the wording is not correct, it can be amended.

Shri V. G. Deshpande: What I mean is that the son should include the son of a predeceased's son and widow. All these I want to be included.

I do not know whether a discussion on this will be appropriate before the Schedule is taken up. That was why we had requested the Chair that the Schedule may be taken up along with this clause. We have allotted a lot of time to the Schedule.

Mr. Speaker: I think this will be appropriate at this stage, because simultaneously all preferential orders must be exhausted before we come to the Schedule. When we come as to who ought to be included in the list or not, that is another matter.

Shri V. G. Deshpande: Then I will place my point of view briefly. The very scheme of the inheritance, as was discussed in the general discussion at length, is the continuance of the family. According to that, we have always felt that a son or a son of a predeceased son or a son of a predeceased grandson, any of the three persons, will ensure the continuity of the family. I am very much surprised that here again and again it is being said that the object of this Parliament or of society is to take society towards individualism. I do not believe that in the socialist pattern of society you must look more to the interest of an individual than to the social well-being as a whole. The well-being of the family is a much greater ideal than giving freedom to every individual and making for the disintegration of the whole society.

If you study the list in Class I, I think you will find that in no law in the world, be it the Muhammadan law

or the Christian law or the Indian Succession Act, there is such a long list of simultaneous heirs. Dr. Kane while speaking in the Rajya Sabha—all of us may be knowing that Dr. Kane is one of the eminent supporters of giving right to daughters—has said that he is opposed to this kind of list being increased to such a length. And he says, "I am prepared to give simultaneous succession to a son, son's son, or grandson's son, or daughter at the most; I am not prepared to go beyond that". We find a very long list here.

Shri C. C. Shah: What about widow?

Shri V. G. Deshpande: Widow? I am myself proposing widow. I do not mind widow remaining here. In fact, I find from the present Bill that you have curtailed the rights of widows as they exist today, and I intend proposing an amendment whereby the widow's position may be improved. Because, here, in the name of giving more rights to women, the women who really need them have been deprived of their rights. Therefore, I do not mind a widow getting an interest, a son getting an interest, or son's son—who is as good—or grandson's son. They should remain there. And all this long list of predeceased daughter's son and predeceased daughter's daugter, all these things, should be excluded from this. Because, I feel, as some of the Members have said, that the main purpose of this Bill is to completely destroy the family property and the way in which people are living in this country. As my hon. friend Shri More said, now in this welfare State everybody's care will be taken by the State. When everybody's care is going to be taken by the State and when that part of socialism that one way traffic of socialism, is going on, I do not know, but it appears that you will deprive people of all their means of livelihood and all the insurance which the families have provided for helping all the orphans, all those who are unprovided for, all that you will destroy without making, as a substitute, any scheme on behalf of the Government. Thereby all the people who do not get any maintenance or support will, in the absence of any such scheme, be greatly hit. And I think simply for the fun of disintegrating family property, you should not increase the list to such length.

Therefore, as I have proposed, only the first three cases should be there; and we may add there these two cases, namely, the predeceased son and predeceased son's son, and also predeceased grandson's son. After making this addition if we keep the list and remove the remaining portion, this law would be at least tolerable, if not acceptable.

Mr. Speaker: I only want to know this from the hon. Minister. Originally, possibly, when the entire property of all the members was the property and that had to be shared, there might have been some justification for having the widow of a predeceased son. Under the amendment this widow gets a share of the husband's property. What I am saying is this. If X dies, instead of dividing his property amongst his sons, daughters and widow, if it is given to the widow of a predeceased son also, she will get the share of her husband's property as well as that of her father-in-law's property also, to the exclusion of others.

Shri C. R. Chowdary: The daughter-in-law is entitled to inheritance, whereas the son-in-law is not entitled.

Mr. Speaker: Therefore, when the entire property was divided, because it was constituted early, each son becomes at independent owner, his share becomes separate. Therefore, why not confine it to the son, daughter and widow of that person—and son means son's son and son's son's son—instead of taking it further to a predeceased son's widow who has a right in her husband's property and who will now get a share of her father-in-law's property and brothers-in-law's property?

Shri H. G. Vaishnav: That is worth considering.

Shri Seshagiri Rao: The same thing applies to a daughter of a predeceased son.

Mr. Speaker: After this amendment we will consider it.

Pandit Thakur Das Bhargava: We have also given amendments for the purpose of deleting these heirs, daughter of a daughter, etc., in the Schedule. You may kindly take votes then. This has come by the way. There are joint amendments.

Mr. Speaker: The hon. Member has not followed me. I said to the hon. Minister that at the time when the original clause stood, if a person dies, the entire property of all his undivided

[Mr. Speaker]

sons should be treated as property for division. The point is that in respect of the widow of a predeceased son, the property is treated as the property of the father-in-law, therefore she must have a share. I was asking him, in view of the amendment that has been made already, whether this lady must once again be given a share, along with her husband's share, of her father-in-law's property. The difficulty will be that the share of the widow, son and daughter will go down.

Shri S. V. L. Narasimham (Guntur): You are considering only the Mitakshara coparcenary. You take cases..

Shri Pataskar: What you have said, I think, Sir, will be taken into consideration at the time of discussing the Schedule. Here we say "Among the heirs specified in the Schedule, those in class I shall take simultaneously". We shall decide it then, And we say "those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third enry; and so on in succession". I think no amendment is necessary.

Shri N. C. Chatterjee: We are objecting to all these eleven persons being made simultaneously in the same category. We have a lot to say on this. I take it that whatever happens to Shri Deshpande's amendment will not bar the discussion of the Schedule.

Mr. Speaker: Even according to Shri Deshpande's amendment there will still be a group who will take simultaneously; the son, the daughter and the widow will take simultaneously. He says that the others need not be brought under that category. The hon. Minister says that we can split I into I(a), I(b), and I(c) and say that these are the people in category (a) and we can have (b) and (c).

Shri S. V. L. Narasimham: You were suggesting to us that it is not necessary.....

Mr. Speaker: We are not now going into that matter.

Shri S. V. L. Narasimham: I want you to consider this. This particular Schedule is not confined to the Mitakshara coparcenary but to all other forms also. In Dayabhaga also, suppose the father is absent and the son dies leaving behind a widow. Should she not be given a share in the father-in-law's property? It is not confined only to the Mitakshara coparcenary but applies to all Hindu properties as well. I only wanted to make that submission.

Shri Pataskar: From every point of view, so far as clause 9 is concerned there should be no difficulty, unless on some misapprehension. We are just saying "Among the heirs specified in the Schedule, those in class I shall take simultaneously and so on". I am prepared to say, I do not mean that the present list should be adhered to.

Mr. Speaker: We can transpose some of those items into some others.

Shri Pataskar: Of course, when we consider the Schedule, that will be the time to consider those things.

So far as Shri Deshpande's amendment is concerned. I think what he probably means is that the females should come only in the absence of a male. That is something, I think, which is not acceptable. I believe, as was pointed out to him, this will, if we put it in this form, create confusion. Even from his point of view, I think clause 9 as it stands now should be retained. I think it does not cause any harm to anybody. The proper place to discuss all these matters would be when we come up to the Schedule.

Shri V. G. Deshpande: Will it bar discussion on this?

Shri Pataskar: How can discussion on this be barred?

Mr. Speaker: Therefore, what I suggest is—clause 8 we have disposed of—that we may take up clauses 9 to 14 and the Schedule together.

Some Hon. Members: That should be done.

Mr. Speaker: I suggest that these may be taken together and disposed of once for all.

Shri Seshagiri Rao: Clauses 12 and 13 are not necessary and so they have to be deleted.

Mr. Speaker: We will come to that. We have not discussed clauses 12 and 13. If we come to the conclusion that they are not necessary then we will delete them. We are taking up clauses 9 to 14 together as a group. It is open

to the House to reject any clause out of them. So the clauses 9 to 14 and the Schedule will be discussed together.

Shri Pataskar : But what is the difficulty with regard to clause 9? Let us examine it. As to who should be in class I and who should be in class II we will decide when we take up the Schedule.

Shri N. C. Chatterjee : The only thing I want to point out is, in order to avoid unnecessary fragmentation, it may be necessary to split up the list of 11 heirs into two categories. That is our object. Our object is, if you put them down as 'simultaneously' here, even if you amend the Schedule for the purpose of saying that such and such people shall be in class I, all these 11 heirs should not be placed in the same category.

Mr. Speaker : You must split them into sub-categories.

Shri N. C. Chatterjee : That is our object.

Shri Pataskar : I will take, for example, a hypothetical case.

This clause says :

> "Among the heirs specified in the Schedule, those in class I shall take simultaneously...."

Whether the number is 2, 3, 4, 5 or 15, that will be decided when we come to the Schedule. I do not understand what difficulty arises by passing clause 9.

Shri N. C. Chatterjee : It may bar discussion on this. We are only safeguarding that it may not be said later on that we are stopped from saying that this order of priority cannot be altered.

Shri Pataskar : Because you pass clause 9, I will not say that you cannot change any word in class I of the Schedule.

Shri N. C. Chatterjee : That is all what we want.

Mr. Speaker : The hon. Minister has not appreciated the difficulty. The difficulty will arise this way. It may be that when you come to the Schedule the list given in class I will have to be split into two categories, each group taking simultaneously.

Shri Altekar : It will not be so. If we can reduce the number in class I of the Schedule to 5 or 6, we can take the rest of them at the top of class II in the Schedule. Therefore, the wording of the clause will not in any way come in our way.

Shri H. G. Vaishnav : The rest of the categories will have to be accommodated somewhere, that is all.

Shri Pataskar : They will go to class II.

Mr. Speaker : Class II means that the first heir will be preferred to the next. It may so happen....

Shri Rane (Bhusawal) : But, supposing a class III is there?

Shri Seshagiri Rao : That is possible.

Mr. Speaker : Therefore, there will be class I, class II, and class III. Class II also shall take simultaneously or something like that. Suppose we split class I and give preference to the first five numbers to take simultaneously the others ough not to rank along with them in the simultaneous distribution, but they may rank before class II. In that case there may be some difficulty if we pass clause 9 as it is.

Shri Pataskar : I will just again try to put before you my point. If you look to the Schedule, there are two classes, class I and class II. In class II there are entries : I, II, III up to X. The scheme is that out of the two classes, with regard to class I we say that the heirs mentioned there shall take simultaneously. With regard to class II we say that those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry ; and so on in succession.

Mr. Speaker : We will assume that the House agrees to put son, daughter, widow or some such categories, out of the various categories, along with the heirs in class I.

Shri Pataskar : At least some of the items in class II.

Mr. Speaker : The heirs set out in class I are now desired to take simultaneously. The objection was that those people who are daughter's daughter's daughter and so on ought not to

[Mr. Speaker]

be in the same category as son, daughter, widow and so on. If for any reason at least one or two of the heirs are excluded from this class I, they will come among the heirs who will take simultaneously, in which case they cannot be put in class II, because the earlier excludes the second. Therefore, the third category has to come into being. So my suggestion is this. Let this group of clauses from 9 to 14 and the Schedule be taken up together for discussion.

Shrimati Sushama Sen (Bhagalpur South) : That will be better.

Mr. Speaker : Clauses 9 to 14 and the Schedule exhaust all the categories. The other clauses relate only to diqualification, computation of degree etc. They are not germane to this; of course, they are independent clauses and they are connected to the subject. We have discussed clause 9. All the time available for clauses 9 to 14 and the Schedule will be utilised together.

Shri Seshagiri Rao : I have got one submission to make. We have decided now that clauses 9 to 14 shall be taken together. There are two clauses —clauses 12 and 13—which will have to be rejected.

Shri Rane : That also can be discussed when we take up all these clauses together.

Mr. Speaker : It is only a question of opinion. I will allow the hon. Member to speak and if he wants to say that clauses 12 and 13 should not be there, let him say so.

Shri Altekar : Then amendments to the Schedule will have to be sent up now.

Mr. Speaker : If they have already been sent up I will treat them as moved.

Shri Altekar : We have only given the numbers up to clause 9.

Shri C. C. Shah : Clauses 9 to 14 can be considered apart from the Schedule. This merely puts the order of succession. That is a different matter and the Schedule can be considered independently.

Mr. Speaker : My difficulty is, it is not only the categories of heirs which the Schedule contains, but how it is regulated by clause 9.

Shri C. C. Shah : There will be two classes, class I and class II.

Mr. Speaker : There can be a third class.

Shri C. C. Shah : Obviously if some heirs are excluded from class I, then they will have to go into class II.

Mr. Speaker : They can be taken in class I-A and the heirs there shall take simatluneously. There may be a division of class I into two groups, both taking simultaneously.

Shri C. C. Shah : Even in class II there are heirs who take simultaneously. If you see entries II and III in class II for example, the son's daughter's son, the son's daughter's daughter etc. take simultaneously. In entry III also, daughter's son's son, daughter's son's daughter etc., take simultaneously. Therefore, if some of the heirs are taken out from class I and put in class II, they can be put in one entry and they shall take simultaneously.

Shri Altekar : Even father and mother take simultaneously.

Shri C. C. Shah : Yes. So, there will be no difficulty about that.

Mr. Speaker : Therefore, what the hon. Member suggests is that whatever is taken out of class I can be put in class II.

Shri C. C. Shah : And the question is as to in which entry they should be put.

Mr. Speaker : Exactly, and the order in which they should be put.

Shri Patnaskar : Because we pass clause 9 now, I am not going to say that we should not make any alteration in the Schedule.

Shrimati Sushama Sen : In fact, I have given an amendment seeking to put father and mother in class I.

Mr. Speaker : That we will consider when we come to the Schedule.

Shri V. G. Deshpande : Then are we discussing only clause 9 now?

Shri S. S. More : I would suggest that Shri V. G. Deshpande's amendment may be postponed now and taken up along with the Schedule.

Shri C. C. Shah : So far as Shri Deshpande's amendment is concerned, he wants to exclude all females in class I and include all males.

Shri V. G. Deshpande : Except.....

Shri C. C. Shah : Except widow and daughter.

Mr. Speaker : There is no meaning in it. The object is to give to the daughter.

Shri S. S. More : When we come to the Schedule, if his amendment is accepted, then we shall recast the Schedule so that, whatever heirs he wants should inherit simultaneously, we will bring in the first category. So, it is one of readjusting the Schedule to suit his amendment.

Shri C. C. Shah : Yes.

Mr. Speaker : He may word his amendment also appropriately. It may come under the Schedule. There is no other amendment. The quesion is :

"That clause 9 stand part of the Bill"

The motion was adopted.

Clause 9 was added to the Bill.

Clause 10.—(*Distribution of property among heirs in class I of the Schedule*)

Shri Rane : I beg to move :

(i) Page 6—

for lines 10 and 11, *substitute* :

"*Rule* 2.—Each surviving son of the intestate shall take on share."

(ii) Page 6—

after line 24, *add*:

"*Rule* 5.—Each surviving daughter of the intestate shall take half a share.

Rule 6.—The surviving mother and father together or if only one of the two is surviving, the surviving mother or father shall take one share."

Amendment 10 is only an explanatory one. My amendment clears the position. My amendment says that each surviving son of the intestate shall take one share. As regards amendment No. 15 I have sought to insert rule 5 and rule 6 which gives the status to the parents in class I of the Schedule and seeks to give half share to a daughter.

Shri S. S. More : In view of the amended clause 8, what is the point in this amendment ?

Shri Rane : I have given an amendment to the Schedule also. Unless you put this rule here, the parents cannot be given any share in class I of the Schedule and even if they are included in class No. I, it becomes imperative.

Shri C. C. Shah : But that is an amendment to the Schedule.

Mr. Speaker : Mere amendment to the Schedule is not enough.

Shri Rane : There are only four rules in clause 10 as it stands now. My amendment seeks to insert two more rules, Rule 5, as my amendment shows, says :

"Each surviving daughter of the intestate shall take half a share."

Rule 6 says :

"The surviving mother and father together or if only one of the two is surviving, the surviving mother or father shall take one share."

As regards succession in regard to parents, I have submitted that the parents, the father and the mother, should be put in class I as heirs.

Mr. Speaker : Cannot that be done in the Schedule?

Shri Rane : No; because, when we are dividing the property, what share is to be given must be mentioned here.

Mr. Speaker : We are in clause 10. "The property of an intestate shall be divided among the heirs in class I in accordance with the following rules". So, what is the hon. Member's point?

Shri Rane : Rule 1 in this clause says that the intestate's widow, or if there are more widows than one, all the widows together, shall take one share. The next rule says that the surviving sons and daughters shall each take one share. The third rule deals with the heirs. So, unless there is a specific rule

[Shri Rane]

in this clause for the parents it will be inoperative. The amendment to the Schedule will also be inoperative."

Mr. Speaker: These rules refer individually to particular heirs. If you transpose father and mother here, there is no reference to it.

Shri Rane: Yes, Sir. Therefore, it is absolutely necessary.

Shri S. S. More: I cannot understand rule 5. The meaning is not clear.

Shri Rane: I will first say what I have to say about it.

Shri Patnaskar: He wants half a share for the daughter.

Shri Rane: I will make it clear. As regards the parents, you know Sir, that in the Hindu law the rule is this :

पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा ।।

Suppose a person dies, leaving no son. Then his widow comes in. Then his daughter and then the daughter's son, *pitrus* etc. If we are laying down the specific heirs, my submission is that there is no reason why the parents should not put in clause I.

Besides, you will find that in the Rau Committee also they have enumerated the heirs at page 53 of the report and father and mother are enumerated there. In the original Bill also, in class I, the words "son, widow, daughter, son or daughter of a predeceased son," etc., occur. In the Rau Committee's report, they have put in thus:

> "(1) son, widow, daughter ; son and widow of a predeceased son; etc."

The second item is "daughter's son". The mother comes third. The fourth is father. Then follow the son or daughter of a predeceased son, etc. This is mentioned in the Rau Committee's report. The enumeration of the parents as heirs has been made there.

Then, in the report of the Joint Committee also, you will find that rule 2 in clause 10 gives some status to the mother also. But that has been omitted by the Rajya Sabha. In page 6 of the report of the Joint Committee you will find that rule 2 has been inserted and it says thus :

> "The surviving sons and daughters and the mother of the intestate shall each take one share."

So, the mother was given a status by the Joint Committee. I do not see any reason why the Rajya Sabha omitted it. My submission is that the parents should be given a status in clause I. The father and mother together constitute the parents. My amendment No. 15, inserting rule 6 is therefore very clear. It says that the surviving mother and father together or if only one of the two is surviving, the surviving mother or father shall take one share. According to me, it is very clear.

As regards rule 5, each surviving daughter of the intestate shall take half a share. I might here read what the Hindu Law Committee observed in this connection. Perhaps it is known to you, Sir. This was a very complicated question and by way of a compromise, the Rau Committee suggested that the daughters should be given a half-share. It appears some of the representative organisations have agreed to what the Rau Committee had observed.

Mr. Speaker: The hon. Member is on another point. He disposed of the point relating to the giving of a share to the father and the mother. He says that both father and mother should be given one share along with the son. If both of them are there, they will take half and half. If only one is there, the survivor will take, and the widows will also take a share.

Shri Rane: It should be placed in class I of the Schedule.

Mr. Speaker: It is said in rule 2 that the surviving sons and daughters of the intestate shall each take one share.

Shri Rane: In the place of that rule.

Shri S. S. More: It is not in place of that. Shri Rane's amendment provides for an independent rule.

Mr. Speaker: It is a mistake. We must take the substance of the rule.

Shri Rane: Sir, it must be read along with amendment No. 10. Amendment No. 10 says that each surviving son of

the intestate shall take one share. I have omitted the daughter from that rule. Therefore, I have inserted rule 5.

Mr. Speaker: He wants amendment Nos. 10 and 15 to be taken together.

Shri Rane: This is what the Rau Committee, at page 19 of the report, in paragraph 72, said :

> "The question of the quantum of the share which should be allowed to the daughter has engaged our anxious attention. The one-fourth share provided in the *smritis* seems to be too small, even as a first step; in many cases, it will not amount to much. We note that Sir Vepa Ramesam (Retired Judge of the Madras High Court) would prefer to begin with the one-fourth share and raise it later, if experience proves that the dowry evil has been effectively reduced as a result of giving the daughter the one-fourth share. Most of the women witnesses consider it inequitable to deny to the daughter the same share as the son, but practically all of them accept the provision of half-a-share as a compromise."

It goes on to say "some witnesses have suggested" etc. I do not know who tendered evidence before that committee. But these are the observations of the committee. By way of compromise they have suggested half-share.

Now, even in the original Bill of 1954, clause 10 says as against rule 5 :

> "Each surviving daughter of the intestate shall take half a share."

Even the Rau Committee by way of a compromise recommended that the daughter should be given half share. In the original Bill also, only half share was given to the daughter. But, the Joint Committee raised it to equal share

Shri S. S. More: The Rau Committee also recommended the abolition of getting right by birth.

Shri Pataskar: You cannot have it both ways.

Shri Rane: Besides Sir, I have made some mathematical calculations about shares. Suppose a father dies leaving 2 sons and 3 daughters and a widow and property worth Rs. 9,000. If we accept the provision in the Bill as it is, each son and daughter will get Rs. 1,500. But, for the married daughter, there is another capacity. Suppose as soon as she marries, unfortunately, her husband dies. Then, she inherits the whole property, say Rs. 9,000 if the husband dies without any issues. Then again suppose, she remarries as she is issueless, she can again get the property of her husband whom she has remarried. Therefore, the property of the married daughter is augmented, whereas the share of the son remains constant at Rs. 1,500.

Shri Pataskar: The son has got more earning capacity than the daughter.

Shri Rane: That is a different question. Even today, there are many women who earn more than their husbands and brothers. So, if you give equal share to the daughter, the question of equality is reduced to absurdity because the sister becomes rich while the property of the brother remains constantly at Rs. 1,500 and continues to remain poor. As far as the share of the wife of the son is concerned, that is the absolute property of the wife and the husband does not get anything. By this Bill, she becomes the absolute owner. So, the husband has no right over the property of the wife. On her death, the property reverts to the heirs of the father, because under clause 17, the property of the son's wife reverts to the heirs of the father; the husband does not get anything. Thus the brother remains poor and has no opportunity to augment his share and his property of Rs. 1,500 remains a fixed one.

Shrimati Renu Chakravartty: Only if she has no children.

Shri Rane: If there are children, the father will get only a fraction; he does not get everything.

Much has been made of equality of shares. If we calculate mathematically, the share of the daughter has some capacity to be augmented by the unfortunate incident. I have mentioned. When the question of property comes, all those things must be taken into consideration. That is why I have moved this amendment; and for all these reasons, I commend my amendment to the acceptance of this House.

Mr. Speaker : Amendments moved :

(i) Page 6—

for lines 10 and 11, *substitute* :

"*Rule* 2.—Each surviving son of the intestate shall take one share."

(ii) Page 6,—

after line 24, *add*:—

Rule 5.—The surviving daughter of the intestate shall take half a share."

Rule 6.—The surviving mother and father together or if only one of the two is surviving, the surviving mother or father shall take one share".

Shrimati Sushama Sen : Mr. Speaker, I oppose this amendment, because by accepting the Government's amendment to clause 6, the share of the daughter has been reduced. If we accept this amendment of Mr. Rane, it will reduce the share of the daughter still further. All of us have stood for equal shares for the son and daughter and that has to be adhered to. So, I oppose this amendment.

Mr. Speaker : The hon. Member has not said anything about the share to be given to the father and mother.

Shrimati Sushama Sen : As far as the father and mother are concerned, I want that they should be placed in Class I.

Mr. Speaker : So, the hon. Member accepts Mr. Rane's amendment so far as the father and mother are concerned.

Shrimati Sushama Sen : Yes, Sir.

Shrimati Renu Chakravartty : Regarding father and mother, my own personal opinion is that I have no objection to their being placed in Class I. I am not quite clear; but, I remember that there was a lot of discussion about it in the Joint Select Committee also.

Shri S. S. More : The Joint Committee recommended the inclusion of mother in Class I.

Shrimati Renu Chakravartty : Yes, I remember definitely that many of us were in favour of placing the mother in Class I and the Joint Committee agreed to it. But the Rajya Sabha did not agree to it. I personally think that it would be quite fair to include the father and mother in Class I.

As regards the half share proposed by Shri Rane, I very strongly oppose it. He has mentioned about the Rau Committee. One cannot take a particular recommendation of that committee and refuse certain other portions of it. At the time when the recommendations of the Rau Committee were before the country, I know that many women's organisations definitely demanded an equal share. But, finally, the opposition was much greater and we accepted a compromise that half share would be given to the daughter just as we accepted the compromise yesterday, though it was very bad. If the whole of the Rau Committee's recommendations were accepted and if Mitakshara coparcenary is ended and after that if half share is given to the daughter, in most cases the daughter would get a bigger amount than what she would get under the Mitakshara coparcenary. That is my personal opinion. Therefore, there is no use coming forward and saying that these were the recommendations of the Rau Committee and so we should accept them, without saying what the total effect would be if all the recommendations are accepted.

As far as Mitakshara system is concerned, I stick to the position I took yesterday that Mitakshara daughters are going to get a very very small fraction, and, I repeat the word, it is almost a fraud upon the Mitakshara daughters. As far as the Dayabhaga daughters are concerned, they will substantially benefit by this, if equal share is given. Now, our brothers come forward and say, "equal share will not be given; it should be reduced to half share". I say that this is totally unwarranted. There is no use arguing that she may inherit as daughter and again as widow and so on. We cannot help that. In many cases, she may not inherit anything as a widow. In certain cases, she may inherit as widow, but she may not inherit anything as daughter. These various permutations and combinations will be there. My hon. friends do not seem to realise that in any case, the woman in our country today has not got as yet the ability to earn. She does not have the opportunities open to man. Therefore, to say that there is scope for augmentation of her property is a fallacious argument.

Another argument brought forward is that as far as the father's property is concerned, by intestate succession, the property will be equally divided among the undivided sons and daughters. But, the actual total amount which the son will inherit from the ancestral property plus the intestate property of the father will be substantially more than what the daughter will get.

I feel that from all points of view, there is absolutely no justification in saying that the daughter should get half the share of the son. Therefore, I am totally opposed to Mr. Rane's amendment, which seeks to reduce the daughter's share.

Mr. Speaker : I want to make one suggestion. Amongst the amendments to clause 10, there are various subjects. We are at present dealing with the shares to be given to the father and mother and also the daughter. I may dispose of all the amendments to clause 10 dealing with this subject. I am looking into the list of amendments. Mr. Altekar and Mr. Joshi have given amendments. Mr. Joshi's amendment says that an unmarried daughter succeeding along with a male heir shall get a limited estate known to Hindu Law etc. I will give an opportunity to each hon. Member to discuss his amendments.

Shrimati Renu Chakravartty : They may move their amendments first.

Mr. Speaker : I will dispose of all the amendments dealing with the shares to be given to the father, mother and daughter. So far as Mr. V. G. Deshpande's amendment is concerned, I think it deals with a different matter.

Shri V. G. Deshpande : Rules 2 and 6 of my amendment No. 106 deal with this subject.

Mr. Speaker : Rule 2 reads :

"The intestate's widow, or if there are more widows than one...." etc.

That portion of his amendment is moved. Rule 6 says :

Then, each surviving unmarried daughter who is neither a widow nor a divorcee of the intestate shall take a one-fourth share. This is amendment No. 171—Rule 6.

Shri Bogawat is not here. Then, Shri Joshi.

Shri Altekar : He has amendments along with me.

Mr. Speaker : Independently, he is not here.

श्री बी० पी० सिंह (मुंगेर सदर व जमुई) मेरे संशोधन हैं नम्बर ११, १२, १३, १४, १६, और ११२। इनका भाव यह है कि लड़की को लड़के से आधा शेअर मिले।

Mr. Speaker : I will give him an opportunity to speak. Shri H. G. Vaishnav: he is not here. Amendment No. 70 is gone.

Shri Altekar : I move amendments 107 to 110. My difficulty in this connection is....

Mr. Speaker : I will give him a chance . Shri Bogawat is not here. Shri H. G. Vaishnav is not here; amendment No. 73 also goes. Pandit K. C. Sharma is not here. Shri H. G. Vaishnav and Shri Bogawat are not here. Shri Rane: he has already moved. Then, Shri Joshi's amendment that the daughters will in any case get a half share in preference to sons; he is not here. Then, Shri Altekar's amendment regarding limited estate. We will come to property under clause 16. These are the amendments: 11, 12, 13, 14, 15, 16, 106, 107—111, 112, 171 of which Nos. 10 and 15 have already been moved by Shri Rane.

Shri B. P. Sinha : I beg to move :

1 Page 6—

line 10—

omit "and daughters" and

(ii) *after* line 11 *insert* :

"Rule 2A.—The surviving daughters of the intestate shall each take half-share".

(2) Page 6, line 18—

after "one share" *add*—

"and half share respectively."

(3) (i) Page 6, line 18,—

after "(or widows together) *insert*—shall take one share"

(ii) line 19—

for "equal portions" *substitute*—"one portion and half portion respectively".

[Shri B. P. Sinha]

(4) Page 6, line 24—

for "equal portions" *substitute* "one portion and half portion respectively".

(5) Page 6—

after line 24, *add* :

"*Explanation.*—Daughters in any case will get only half share in preference to sons while widow or widows one share equal to her sons. As the daughter will also get her share in her husband's property, the cost of marriage will be met from her share."

Shri V. G. Deshpande: I beg to move :

Page 6—

for lines 8 to 24, *substitute* :

"Rule 1.—The surviving undivided sons and remoter agnatic male descendants upto the fourth degree shall take the property of the intestate by survivorship to the exclusion of all other heirs. This rule shall not apply to Hindus governed by the Dayabhaga system of law.

Rule 2.—The intestate's widow, or if there are more widows than one, all widows together, shall take one share.

Rule 3.—The surviving divided sons of a Hindu governed by the Mitakshara system, or the surviving sons, divided or undivided, of a Hindu governed by the Dayabhaga system, shall each take one share.

Rule 4.—The heirs in the branch of each predeceased son of the intestate shall take between them one share.

Rule 5.—The distribution of the share referred to in Rule 4 among the heirs in the branch of the predeceased son shall be so made that his widow (or widows together) and the surviving sons get equal portions; and the branch of his predeceased son gets the same portion.

Rule 6.—Each surviving unmarried daughter (who is neither a widow nor a divorcee) of the intestate shall take a one-fourth share."

Shri Altekar: I beg to move :

(i) Page 6, line 10—

for "daughters" *substitute* :

"unmarried daughters".

(ii) Page 6, line 13—

omit "or each predeceased daughter".

(iii) Page 6, line 19—

for "daughters" *substitute*:

"unmarried daughters"

(iv) Page 6—

omit lines 22 to 24.

(v) Page 6—

after line 24, *add* :

"Rule 5.—An unmarried daughter succeeding along with a male heir shall get a limited estate known to Hindu Law, and it will revert to the male heir or his heirs on her marriage."

Shri B. P. Sinha: I beg to move :

Page 6—

after line 24 *insert* :—

"10A. The widow or (widows) shall not have the right to dispose of her property as the property will go to her male issues after her death. She can sell the property only if the property is not sufficient for her maintenance. The sale of property will take place with the consent of the District Judge and preferably to her male issues (sons), if they so desire."

Shri V. G. Deshpande: I beg to move :

Page 6—

for lines 8 to 24, *substitute* :—

"Rule 1.—The surviving undivided sons and remoter agnatic male descendants upto the fourth degree shall take the property of the intestate by survivorship to the exclusion of all other heirs. This rule shall not apply to Hindus governed by the Dayabhaga system of law.

Rule 2.—The intestate's widow, or if there are more widows than one, all widows together shall take one share.

Rule 3.—The surviving divided sons of a Hindu governed by the Mitakshara system, or the surviving sons, divided or undivided, of a Hindu governed by the Dayabhaga system, shall each take one share.

Rule 4.—The heirs in the branch of each predeceased son of the intestate shall take between them one share.

Rule 5.—The distribution of the share referred to in Rule 4 among the heirs in the branch of the predeceased son shall be so made that his widow (or widows together) and the surviving sons get equal portions, and the branch of his predeceased son gets the same portion.

Rule 6.—Each surving unmarried daughter (who is neither a widow nor a divorcee) of the intestate shall take a one-fourth share."

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

Pandit Thakur Das Bhargava: There are similar amendments to the Schedule on these particular points: substitute for daughter, unmarried daughter, etc. What happens to these amendments? Numbers 43 to 51 may be included.

Mr. Speaker: If there is any different category, I will put it.

Pandit Thakur Das Bhargava: The category is not different. The amendments say, in the place of the daughter substitute unmarried daughter, etc. There is no difference. Similarly, there are amendments of my friends here.

Mr. Speaker: If we decide upon them, they will be carried over to the Schedule.

Pandit Thakur Das Bhargava: They will be ultimately decided at the time of the Schedule.

Mr. Speaker: We agree to get along with clauses 10 to 14 and the schedule together.

Pandit Thakur Das Bhargava: Then, they will be ultimately decided when the Schedule is decided.

Shri Altekar: Then, I should like to move these amendments and speak at the time of the consideration of the Schedule. If I discuss these things here at this stage, they relate to the schedule. In the Schedule there is simultaneousness. I want that the daughter that has to come here should be the unmarried daughter.

Mr. Speaker: If they want to say that the daughter will have a half share, they must say here. Everything in regard to shares comes under clause 10. There is no use of reserving it for the Schedule.

Shri Altekar: The voting may be postponed.

Mr. Speaker: No. All these, half share, etc., cannot be kept hanging in the air.

Shri Altekar: The classification of daughter, married or unmarried, may be taken at the time of the Schedule.

Mr. Speaker: No. Even that, married or unmarried, widow, etc., shall be disposed of now.

Shri Altekar: Then, I shall speak now. My submision is this. In the Schedule of simultaneous heirs who should succeed, it should be only the unmarried daughter and that the daughter's daughter and daughter's son, who are coming there as heirs of the predeceased daughter should not find a place there. Even also the long list, daughter of a predeceased son, and so on. Why I say this is simple. As a matter of fact, when a property is being divided, the shares should go to those who will be the nearest heirs. In the case of a family where there is a son, there is an unmarried daughter, there is a married daughter and there is a married daughter who is dead, who has got sons and daughters, what will happen is this. In the case of the married daughter, expenses have been made, she has gone to her husband's house and settled there and she is provided. In the case of the daughter's sons and daughters, they also are in their father's family and they are provided for. Sums have been spent on the marriage of their mother who is the deceased's daughter. If the father dies and the daughter's son and daughter's daughter come in, to share along with the son, the son or son's son and the unmarried daughter in the family of the deceased would get a smaller share. In this case, if there is an unmarried daughter, two sons and two married daughters, one dead and one alive, the position would be, each would get one fifth. The unmarried daughter will have one-fifth share for her marriage. The son, for his education will also get one-fifth share. The two married daughters who are already

[Shri Altekar]

provided for and whose marriage expenses have been met, have been provided in the husband's families and in spite of that each will be taking one-fifth share in addition.

2 P.M.

The daughter's son and the daughter's daughter will be cared for by their father in their own family, and nothing has to be done so far as expenses on the daughter are concerned because they have all been met already. According to the present provision, the two sons will be getting one-fifth each and the unmarried daughter will also be getting one-fifth. Thus, the whole resources for the provision of marriage, education etc., will be only one-fifth. As against this provision of the two sons and the unmarried daughter, the married daughter has the advantage that expenses on her marriage have already been incurred, and in the case of the daughter's son and daughter's daughter they have the advantage of being looked after by their father in their own family. The situation would be while the two sons and the unmarried daughter will have only the limited resources of the family of their father, the married daughter and the sons and daughters of the predeceased daughter who have got their own resources in their own family will again come to take an equal share with the son and the unmarried daughter. Thus, you will be putting a great handicap upon the son and the unmarried daughter. This is an inequality which we are perpetrating and therefore my submission is that it is desirable that we should take out of the Schedule the son and daughter of a predeceased daughter and also the married daughter, and we should only keep the unmarried daughter.

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

It is said that the son also will be married and that his wife will bring an estate from her father's family. I would like to point out that whatever estate is there in the father's family, is an estate which can be equally divided between the sons and daughters, but if the wife brings an estate from her father's family to the family of the husband, it cannot be pooled in the resources of the father-in-law's family. It becomes her separate estate. Even the husband will not be in a position to take it during the life-time of his wife. If she dies issueless, he is not an heir to that property. According to clause 17(2)(a) if the wife dies without any issue, the husband is not to succeed to her estate and the estate reverts back to the family of her father. Under the circumstances, what comes with the wife from her father's family does not become the estate of the husband's family.

I have already explained why we should take away from the Schedule the daughter and the sons and daughters of a predeceased daughter and keep only the unmarried daughter. For this purpose in my amendments I have proposed that "unmarried daughter" should be substituted for "daughter" and also deletion of the words "or each predeceased daughter". My suggestion is that the unmarried daughter should succeed only as a limited owner and for this purpose Rule 5 has to be added, which I have given in my amendment No. 111 :

> "*Rule 5.*—An unmarried daughter succeeding along with a male heir shall get a limited estate known to Hindu Law, and it will revert to the male heir or his heirs on her marriage."

She will be entitled to the estate up to her marriage and after her marriage it will revert back to the father's family. Only in this way we will be doing justice to the sons and unmarried daughters. Otherwise, the sons would be put under a great handicap and the married daughters will be sharers in both the families without any corresponding benefit to the husband or her brother.

The Minister of Defence Organisation (Shri Tyagi): An unmarried girl can sell away her share before her marriage.

Shri Altekar: She cannot sell because she is to succeed to the father and that succession will only open after the death of the father. The marriage of the daughter will usually take place before she is 18. Under the circumstances, there will not be a case arising where she will be selling her property and going away. If such cases arise, I would not like to put any handicap in the way. A girl selling her property and getting married after 18 will be a rare case.

Shri Tyagi: She will be the luckiest.

Shri Altekar: For all these things we need not provide.

We should put in the Schedule only the unmarried daughter and take away the son and daughter of a predeceased daughter. Otherwise, as I

have already pointed out, it will be doing a great injustice to the son and also the unmarried daughter.

श्री बी० पी० सिंह: उपाध्यक्ष महोदय मैंने सदन के सामने ११, १२, १३, १४, १६ और ११२ नम्बर के संशोधन रक्खे हैं। अपने १६ नम्बर के संशोधन द्वारा मैंने यह चाहा है। Daughters in any case will get only half share in preference to sons while widow or widows one share equal to her sons. स्त्रियों को सम्पत्ति में अधिकार दिलाये जाने के सम्बन्ध में हमारी तो अपनी यह धारणा थी कि स्त्रियों को उनके पतियों की सम्पत्ति में अधिकार दिलाये जाने की व्यवस्था की जाती लेकिन इसके विरोध में यह तर्क दिया गया कि यह स्त्रियों के समानाधिकार में बाधक होगा। मैं इसको समझ नहीं सका कि यह किस तरह से समानाधिकार में बाधक होगा। यह कहा जाता है कि जब धारा ६ में संशोधन होगया तो पिता की जो निजी सम्पत्ति है उसी में लड़कियों का अधिकार होगा। मैं समझता हूं कि धारा ३२ और इस धारा के दोनों अर्थ हो सकते है। इस धारा का अर्थ यह भी हो सकता है कि पिता चाहे तो अपनी सारी सम्पति लडकों को ही दे या पिता चाहे तो अपनी सारी सम्पत्ति या सम्पत्ति का बहुत बडा भाग लडकियों को दे दे यह पिता की भावना पर निर्भर करेगा।

श्री आलतेकर का यह कहना कि जो लडकी अविवाहित है उसका पूरा हिस्सा होना चाहिये और जब लडकी का विवाह हो जाय तो उसका हिस्सा आधा होना चाहिये और इसकी सुनकर ऐसा मालूम होता है की मानो प्रेम का अभाव हो और स्पष्ट है कि जहां पर प्रेम का अभाव होगा वहां पर इस तरह की लेन देन की बात चलती है और आप यहां पर यह देख रहे हैं कि हमारी जितनी बातें हो रही हैं वह सारी लेन देन की बातें हो रही है और प्रेम का बिल्कुल अभाव सा मालूम पड़ता है और इसलिये मेरा अपना यह ख्याल है की जो मैंने संशोधन रक्खा है और जिसका कि भाव मैंने अभी पढ कर बताया उस को मंजूर कर लेने में हमारे विधिकाय मंत्री महोदय की कोइ दिक्कत नही होगी।

इसके अलावा मैं यह कहना चाहता हूं कि जो मेरा संशोधन नं० ११२ पर है उसको देखिये। वह इस प्रकार है :

Page 6,—*after* line 24 *insert:*

"10A. The widow (or widows) shall not have the right to dispose of her property as the property will go to her male issues after her death. She can sell the property only if the property is not sufficient for her maintenance. The sale of property will take place with the consent of the District Judge and preferably to her male issues (sons), if they so desire."

ऐसा देखा जाता है कि जब कभी स्त्रियों के पास सम्पत्ति होती है तो मां साधारणतया दूसरे के हाथ तभी बेचती है जब कि उसके सन्तानों को सुख होता है। इसलिये हम को बराबर इस बात का खयाल रखना होगा कि विधवा की जो सम्पत्ति हो उसकी बिक्री न हो सके। और यदि उसकी बिक्री होनी ही हो तो वह उसी स्थिति में हो जब कि उसको विधवा के मेन्टेनेन्स (जीवन निर्वाह) के लिये काफी न समझा जाय और उसको डिस्ट्रिक्ट जज की सहमति से इस तरह से बेचा जाय कि वह सम्पत्ति पहले विधवा के लडकों को ही मिले। यदि वह लेने को तैयार न हो तभी वह दूसरे को मिल सके। ऐसा होने से जो फ्रैगमेन्टेशन आफ लैंड होल्डिग्ज (भूमि के टुकड़े होना) की बात कही जाती है वह भी रुक जायेगी क्योंकि यथासम्भव सम्पत्ति परिवार में ही रहेगी।

मैं समझता हूं कि मेरा संशोधन बिल्कुल निर्दोष संशोधन है और माननीय मंत्री को उसे स्वीकार कर लेने में कोई ऐतराज नहीं होना चाहिये।

श्री बी० जी० देशपांडे : उपाध्यक्ष महोदय मेरा संशोधन इस प्रकार है :

"Each surviving unmarried daughter (who is neither a widow nor a divorcee) of the intestate shall take a one-fourth share."

यह संशोधन लड़की के भाग को कम करने के लिये नहीं रक्खा गया है। मेरी कभी भी इस प्रकार की भावना नहीं है। हम तो लड़की को भाग देने के पक्ष में हैं। पहले भी हम लड़की को भाग देन के विरोध में नहीं थे, उल्टे हम लड़की को ज्यादा देने के पक्ष में थे और इसी प्रकार की हमारी परम्परा सदा से रही है। जब आज इस प्रकार का बिल पास हो रहा है और लड़की को देना ही है तो मैं यह कलह नहीं करना चाहता कि कम दो या ज्यादा दो। परन्तु जब मैंने शास्त्र मर्यादा के अनुसार देखना शुरू किया तो मेरे मित्रोंने बताया कि यदि इस प्रकार क कोई

[श्री वी० जी० देशपांडे]

विषय आता है तो क्या किया जाय । यह ठीक है कि जब कोई पुरुष मरता है तो उसके पुत्र भी हैं और कन्यायें भी हैं । ऐसी परिस्थिति में यदि स्थिति यह आ जाय कि भाई लोग लड़की की तरफ ध्यान न देते हों तो उसके लिये भी मनु ने आज्ञा दी है कि :

स्वेभ्यो शेभ्यस्तु कन्याभ्य : प्रदद्युभ्रतिर पृथक् ।

स्वात्स्वादंशाच्चतुर्भोगं पतिता : स्युरदित्सवः।

लड़का अलग हो जाता है तो लड़की क्या करे ? उसका विवाह होना है, विवाह कैसे हो ? यह ठीक बात है कि पिता जो है वह लड़की के कुमारी रहते हुए उसकी रक्षा करता है, पति युवावस्था में करता है और पुत्र वृद्धावस्था में करता है । परन्तु पिता तो मर गया और भाई अलग हो गये हैं । ऐसी स्थिति में कन्या का क्या हो ? उस कन्या के लिये मनु ने कहा है कि इस प्रकार का प्रबन्ध हो कि उसको सम्पत्ति का एक चतुर्थांश मिले । तो मनु तो उसको एक चतुर्थांश देना चाहते हैं, अब यदि यह सदन चाहता है कि एक चतुर्थांश का आधा हो जाय या आधे के स्थान पर समान भी हो जाय, या अधिक भी हो जाय तो भी उसके लिये मेरा विरोध नहीं है । यदि आवश्यकता के कारण पिता की सम्पत्ति में कन्या को भाग देना ही है तो थोड़ी दृढ़ता दिखाने के भी मैं विरोध में नहीं हूं । परन्तु जो विवाहित कन्या है, जो कि दूसरे के घर में गई है, जिसकी रक्षा का भार दूसरे लोगों ने ले लिया है, उस को केवल सम्पत्ति दिलाने के शौक के कारण यदि यह चीजें हो रही हैं और सम्पत्ति का बटवारा हो रहा है तो म इसको इस दृष्टि से नहीं देखता । एक सामाजिक इच्छा की दृष्टि से कि सम्पत्ति का वितरण होना चाहिये, मैं इसको नहीं देखता हूं और न मैं इसको सामाजिक समझता हूं । सामाजिक न्याय केवल पुरुषको न मिले स्त्री को भी मिलना चाहिये, दूसरे को मिलना चाहिये, चौथे को भी मिलना चाहिये इस प्रकार से सामाजिक न्याय नहीं हुआ करता हैं इसी को देखते हुए मैंने अपना संशोधन दिया है जिसका तत्व यह है कि जो अविवाहित कन्या है उसका यदि भाई अलग हो जाता है, वह अपनी भगिनी के प्रति जो उत्तरदायित्व उसका है उसको नहीं निभाता है और पिता मर गया है, तो पिता के मरने के पश्चात् अविवाहित कन्या को सम्पत्ति में अधिकार दिया जाय । मैंने इस देश में ऐसा विधान देखा भी है । मैंने अपने मित्रों को बताया भी, लेकिन उसको उन्होंने विश्वास करने के योग्य नहीं समझा । गोआ में इस प्रकार का विधान है कि यदि पिता मर जाता है और कन्या अविवाहित है तो उसको समान अधिकार मिलता है कोपार्सनरी (समांशिता) में । परन्तु नियम ऐसा है कि उसका विवाह होने के पश्चात् उसको ५००० रुपये या जो सम्पत्ति उसकी है उसका एक तिहाई, which ever is less (जो भी कम हो) का हक उसको दिया जाता है । विवाह के पूर्व जो अधिकार उसको होता हैं उतना विवाह के पश्चात् नहीं रह जाता है । इस प्रकार का विधान वहां पर है । इसलिये मैं केवल समानता के दृष्टिकोण से ही इस प्रश्न को नहीं देखता हूं । हां, मेरी वृत्ति इस तरफ जरूर देखती है कि लड़की को कोई कष्ट न हो । जिस प्रकार से इस कानन के बनाने वाले कहते हैं कि इस कानून के बनने के पश्चात् न्याय की विजय होने वाली है और चूंकि प्रत्येक आदमी अपनी ही तरफ देखेगा, अपनी बहन की तरफ नही देखेगा इसलिये बहन को अधिकार देना चाहिये, मैं भी उसको मानता हूं, लेकिन उसी समय तक जब तक कि कन्या का विवाह न हुआ हो । इसी दृष्टि से शास्त्रों में भी कन्या को जायदाद में चौथा हिस्सा देने की बात कही गई है । आप उसको पूरा भी दें तो मुझे विरोध नहीं है । परन्तु कन्या को पति की सम्पत्ति में अधिकार देना ज्यादा अच्छा होगा और न्याय होगा ।

पंडित सी० एन० मालवीय : उपाध्यक्ष महोदय, मैं सिर्फ यह समझना चाहता था कि पहला सवाल कि इस विधेयक के पहले शेडयूल (अनुसूची) में मां बाप को .....

Shri C. R. Chowdary : The hon. Member Pandit C. N. Malviya may be asked to speak in English.

Mr. Deputy-Speaker : I cannot compel the hon. Member to speak in English. The hon. Member Shri C. R. Chowdary has expressed his desire, and it is for Pandit C. N. Malviya to speak in whatever language he likes.

Shri C. R. Chowdary : We also want to follow his speech.

Mr. Deputy-Speaker : I cannot debar the hon. Member from speaking in Hindi. It is for the hon. Member to choose whichever language he likes.

Shri S. V. L. Narasimham : We are making a request through you to the hon. Member.

Mr. Deputy-Speaker: I can pass it on to the hon. Member Pandit C. N. Malviya, and he may continue in whatever language he wants.

Pandit C. N. Malviya: I would request my hon. friends to excuse me in this respect. This is a very complicated matter, and I feel I may not be able to express myself so well in English.

तो यह जो सवाल है कि मां बाप को भी पहले शेड्यूल में हम शामिल कर लें, उसमें हो सकता है कि हम भावना की दृष्टि से यह सोचें कि पुत्र के मरने के बाद माता पिता का क्या होगा, लेकिन अब दो तरह के खान्दान होंगे । एक तो कोपार्सनरी (समांशी) के खानदान होंगे और दूसरे ऐसे कि जिनमें माता पिता और पुत्र अलग हो गये हैं । अब, अगर वह सब शामिल हैं तो माता पिता के जिन्दा रहते हुए जायदाद के बटवारे का सवाल पैदा ही नहीं होता और अगर उनके जिन्दा रहते हुए भी बटवारे का सवाल पैदा हो गया और बटवारा ही गया तो पिता के पहले मरने पर माता को जायदाद में हिस्सा मिल ही जायेगा । तो इस तरह से हर हालत में माता को तो हिस्सा मिल ही जायेगा, लेकिन अगर लड़के के मरने के पश्चात् उसके मां बाप को शामिल किया जाता है तो जो उस लड़के या लड़की को पहले से हिस्सा नहीं मिलेगा क्योंकि उसको तो हिस्सा मिलने वाला है अपने पिता की सम्पत्ति में अब चूंकि माता पिता का अधिकार सम्पत्ति के ऊपर है इसलिये बटवारा होने पर लड़के को तो सम्पत्ति का अधिकार मिल जायेगा, पर लड़की को नहीं मिलेगा । इस लिये अगर किसी सम्पत्ति के बटवारे में सब से पहला हक किसी को होना चाहिये तो वह उनको होना चाहिये जिनको सम्पत्ति में पहले से कोई हक नहीं मिला है । अगर इस सवाल को इस दृष्टि से देखा जाय तो माता पिता का नम्बर उसके बाद आता है जब कि पहले जो मरा है उसके बच्चे और बच्चियों को उसकी सम्पत्ति का अधिकार मिल जाय । इस कारण माता और पिता को दूसरी लिस्ट (सूची) में रखना ज्यादा मुनासिब होगा, पहली में नहीं, जहां तक कि सम्पत्ति के बटवारे का सवाल है । लेकिन अगर पिता, माता और पुत्र में स्नेह का सम्बन्ध हैं तो वहां सम्पत्ति का कोई सवाल ही नहीं उठता । बटवारा हो गया, वह अलग हो गये, उसके बाद पिता का सारा धन खर्च हो गया, तो भी पुत्र पर यह निर्भर करेगा कि जब मां बाप जिन्दा हैं तो वह उनकी परवरिश करे या करे । तो सवाल यह नहीं है कि चूंकि सम्पत्ति में हिस्सा मिलगा इसलिए वह उनका ध्यान रक्खेगा वर्ना नहीं रक्खगा । यह सवाल तो बिल्कुल अलग है ।

इसलिये अगर इस तस्वीर को सामने रखते हुए हम देखें तो हमारी समझ में नहीं आता है कि सम्पत्ति के बटवारे के लिय उन लोगों को जिनको पहले से सम्पत्ति में हिस्सा मिला हुआ है, एक साथ रहने दिया जाय । एक साथ उन लोगों को रक्खा जाय जिनको अभी तक सम्पत्ति का कोई भी हिस्सा नहीं मिला है । ये सवाल बिल्कुल अलग अलग हैं । इस वास्ते पहला शेड्यूल वही है कि जिसमें अभी तक किसी को कोई हिस्सा नहीं मिला है । इनका नम्बर पहला है । इनको पहला हिस्सा मिलना चाहिए । इसके बाद वे लोग आयेंगे जिनको कि पहले हिस्सा मिल चुका है लेकिन जो फिर भी दोबारा हिस्सेदार होना चाहते हैं । इनको नम्बर २ पर आना चाहिये । इसलिये मेरा ख्याल है कि राज्य सभा में जब इस चीज पर विचार हो रहा था और अभी राने साहब ने जो पुराने इतिहास को दोहराया और उसमें जब बाद में संशोधन हुआ उस वक्त शायद वह इन्हीं विचारों के कारण हुआ है और इन्हीं विचारों न खास तौर से उन पर प्रभाव डाला है । इसी वजह से माता और पिता को नम्बर २ में रखा गया है ।

दूसरा सवाल लड़की के हिस्से के सिलसिले में है । मेरा खयाल है कि इस बात को मान लिया गया है कि हमारे समाज में अभी तक कोई तबदीली नहीं हुई है और अभी भी हम १,६०० वर्ष पहले जिस स्थिति में रहते थे उसी स्थिति में रह रहे हैं लेकिन मैं, डिप्टी स्पीकर साहब आपकी मार्फत मैम्बर साहिबान से अर्ज करता हूं कि आज एक सवाल तो यह है कि लड़की की शादी होना जरूरी नहीं है । ऐसी स्थिति आ सकती है और ऐसे केसेस (मामले) बढ़ रहे हैं कि जहां पर शादी हो यह आप मान नहीं सकते । दूसरी बात यह है कि शादी होने के बाद एक कुटुम्ब यह मानता है कि सम्पत्ति उसके कुटुम्ब से बाहर जायेगी । लेकिन जब उसके दिल में ऐसा ख्याल पैदा होता है तो उस वक्त इस चीज को नजरअंदाज कर दिया जाता है कि उसी खानदान में दूसरी लड़कियां भी आयेंगी जिनको कि उनके अपने खानदान में हिस्सा मिल चुका होगा । इस तरह से पहले खानदान की सम्पत्ति दूसरे खानदान

[पंडित ठी० एन० मालवीय]

में और किसी दूसरे खानदान की पहले खानदान में सम्पत्ति जायेगी । इस तरह से अगर आप इस चीज को तराजू लेकर तौलें तो बराबर ही हो जायेगा । यह इम्प्रेक्टिकेबल (अव्यवहार्य) होगा एसा नहीं कहा जा सकता है । कहीं पर ज्यादा हो सकता है और कहीं पर कम हो सकता है । मिताक्षरा के अलावा दूसरे खानदान भी हैं जैसा कि अभी कहा गया है और उसमें कोई गड़बड़ी पैदा नहीं हुई है । तो मेरी समझ में नहीं आता है कि हम जब तक तो लड़की की जिन्दगी है, उसको हिस्सा देने के लिये तैयार हैं लेकिन जब वह मर जाती है तो उसके लड़के और लड़की को हिस्सा देने के लिये तैयार नहीं हैं । क्या उस वक्त हमारी मुहब्बत खत्म हो जाती है ? उस वक्त मुहब्बत के बजाय क्या नफरत पैदा हो जाती है ? क्यों उसके लड़कों तथा लड़कियों को हिस्सा नहीं दिया जाता है यह मेरी समझ में नहीं आता है ? जो दलील इसके बारे में दी गई है वह तो मेरी समझ में नहीं आई है । इस वास्ते मैं इस भवन से प्रार्थना करता हूं कि इस पर वह जरा ठंडे दिल से गौर करे । अगर आप एक बार इस बात का फैसला कर लेते हैं कि आपको उसे हिस्सा देना है तो आप क्यों इसमें आना कानी करते हैं, क्यों कोई अड़चनें पैदा करते ह । इसका प्रेम और मुहब्बत से कोई ताल्लक नहीं है, वह एक अलहदा चीज है जैसे कि मेरी बहन बोरकर ने कहा था, बहन भाई और बाप बेटे की मुहब्बत का रिश्ता पैसे की वजह से ही नहीं है । अगर वे आपस में पैसे की खातिर ही मुहब्बत करते हैं और ऐसी मुहब्बत को जो कल खत्म होना है अगर वह आज खत्म हो जाये तो ज्यादा अच्छा है । पैसे को छोड़कर भाई और बहन का तथा मां बाप और बेटे का भी कोई और भी रिश्ता है इसे हमें नहीं भूलना चाहिये । उनका आपस में खून का रिश्ता है जो टूट नहीं सकता । इसके साथ ही साथ हम यह मानते हैं कि ज्वायंट फैमिलीज (संयुक्त परिवारों) का, जो मिले जुले खानदान हैं वे आज खत्म से हो रहे हैं और इनके केसेस चाहे आपको गांवों में दूर दराज मिलें लेकिन शहरों में तो यह चीज बहुत ज्यादा है । आज आपके समाज का ढांचा बदल चुका है । आज आप एक खानदान में कितने मैम्बर्स (सदस्यों) को शामिल करते हैं । आप ही की रिपोर्टों में यह दर्ज है कि आम तौर में एक खानदान में पांच मेंम्बर होते हैं और उन मेम्बरों में एक पुरुष, एक स्त्री और उनके बच्चे आते ह । आप एक खानदान में मां बाप को ज्यादा तर शामिल नहीं करते । अगर आज आप मिताक्षरा खानदान को एक हजार साल पहले जो स्थिति थी उसके मुकाबले में देखें और आज जो समस्यायें हैं उनको ध्यान में रख कर देखें तो आपको यह मालूम होगा कि आज संस्कृति या धर्म का कोई सवाल नहीं है । यह दोनों इससे बिल्कुल अलग चीजें है । इस वास्ते अगर आप लड़कियों को बराबर मानते हैं उनके हक को बराबर बराबर मानते हैं, उनको पुरुषों से हेय नहीं मानते तो फिर आप उनके साथ क्यों किसी तरह का भी अन्याय करते हैं । जब आप यह मान लेते हैं कि पुरुष और स्त्री यह दो चीजें बनाई गई हैं तो आपको यह भी मानना पड़ेगा कि इन दोनों को मिला कर ही संसार बनता है । ये दोनों एक से ही हैं, दोनों बराबर हैं ये दोनों एक गाड़ी के दो पहिये हैं और एक के बिना दूसरा नहीं चल सकता । इन दोनों को साथ साथ ही चलना है । जब ऐसी बात है तो मैं पूछता हूं कि आज क्या हो गया है कि आज जब इन लड़कियों का नाम आ जाता है तो उसके साथ सम्पत्ति को भी जोड़ दिया जाता है । क्या वजह है कि जो भी मुहब्बत की बात की जाती है उसके साथ सम्पत्ति को भी जोड़ दिया जाता है जैसे कि बगैर सम्पत्ति के मुहब्बत पैदा ही नहीं हो सकती या कायम ही नहीं रह सकती । आज तक हम ने इनको इनके अधिकारों से महरूम रक्खा है, आज तक इनको कष्ट सहन करने पड़े हैं । अगर आज इनको कुछ ज्यादा रुपया १००, २०० या १,००० या एकड़ या दो एकड़ ज्यादा जमीन मिल जाती है तो कौन सा पहाड़ टूट पड़ेगा । किस तरह से संस्कृति की हत्या हो जायगी । अगर हम मानते हैं कि माताओं ने और बहनों ने हमारी संस्कृति की रक्षा की है तो अगर उनको कुछ ज्यादा हिस्सा भी मिल जाता है तो कोई परवा की बात नहीं है । जो दलीलें इसके खिलाफ दी जाती हैं वे मेरी समझ में तो नहीं आई हो सकता है कि मेरी अक्ल मोटी हो । लेकिन मैं किसी भी सूरत में एक बहन को एक भाई के मुकाबले में किसी भी तरह से छोटे दर्जे में रखने के हक में नहीं हूं और खास तौर से सम्पत्ति के मामले में तो मैं कभी भी इस प्रोपोजीशन (प्रस्थापना) से एग्री (सहमत) नहीं कर सकता । मैं यह चाहता हूं कि माता पिता को बिल्कुल दूसरे नम्बर पर आना चाहिये । पहले नम्बर में इन्हें पहले शेड्यूल में नहीं आना चाहिये । पहले नम्बर पर जिस तरह से भी आपने शेड्यूल में रक्खा है और जिस हद तक भी आपने रक्खा है उस हद तक आपको इन्हें रहने देना चाहिये । और मेहरबानी करके उसमें कोई तबदीली न

कीजिये । आप जब तक लड़की जिन्दा रहती है उस वक्त तक तो उसको अधिकार देते हैं लेकिन जब वह मर जाती है तो उसके लड़कों और लड़कियों को कोई अधिकार नहीं देना चाहते, इसे मैं गलत मानता हूं । इसी तरह से अगर एक खानदान में से दूसरे खानदान में अगर कुछ पैसा जाता है तो किसी दूसरे खानदान में से उस खानदान में पैसा आ भी सकता है ।

इस वास्ते जितने भी संशोधन पेश किये गये ह उनका मैं विरोध करता हूं । शैड्यूल जिस तरह से बना हैं मैं चाहता हूं कि यह उसी तरह से कायम रहे और उसमें कोई संशोधन न किया जाये । यह जो धारा १० जेरे गौर है और जैसा कि आपने फरमाया कि १४ धारा तक विचार ो रहा है मैं चाहता हूं कि इनको इसी तरह से ही रहने दिया जाये और इनमें कोई भी परिवर्तन न किया जाये । अगर कोई परिवर्तन किया गया तो यह एक बहुत भारी अन्याय हम अपनी बहनों के साथ करेंगे । ऐसा करना उन अधिकारों को भी वापस लेने के बराबर होगा जो कि हम पहले उन्हें दे चुके हैं ।

Shri Pataskar: It was, I think, at one time decided that we should have 4 hours for these clauses and the Schedule. I agree that the Schedule is more important. We have disposed of clauses 7, 8 and 9 and now we are on clause 10. I believe that the discussion is proceeding not so much with regard to the Schedule as with regard to others. The Schedule is more important and will take more time. But 3 hours have already been spent. Most of the things which are said could more appropriately be considered at the time of the consideration of the Schedule itself. Otherwise, if I object that we should devote more time to Schedule, I need not be blamed, because Members seem to mix up all those things relevant to the Schedule with these clauses.

Mr. Deputy-Speaker: It is a very important question that should be considered, because, at the end, perhaps, we might feel that we have got very little time. So, the hon. Members should realise this.

I was surprised when the hon. Minister said that he thought that we were still on clause 10. So far as I can make out, the Hon. Speaker attaches much importance to this clause and he allowed this discussion to go on freely. He left instructions with me as well that he had no time limit fixed for this clause. Therefore, if hon. Members want to attach more importance to this clause, we can discuss it for some time more.

Shri Pataskar: That is all right. It is perfectly within the Speaker's powers to extend that.

Pandit Thakur Das Bhargava: So far as I understood, he said we will deal with shares now and the substantial question—on which I have given an amendment about the inclusion of the father and mother—will be dealt with in connection with the Schedule. If you were taking the vote here, it would mean that the same thing will have to be discussed twice over. I would beg of you to kindly rule that if you want to finish with clause 10, it may be confined only to the shares and the substantive portion may be left over to the Schedule; otherwise, it will be confusion.

Mr. Deputy-Speaker: I agree; I would like that only shares might be discussed now; otherwise, the discussion would be duplicated and we will have to cover the same ground over again.

Shrimati Jayashri; I hope the hon. Member would keep that in view.

Shrimati Jayashri: After passing clause 6, I had expected that hon. Members here will not grudge even the small share that we are providing to the daughters in their father's property and not in the joint family property. It is not correct to say that the sons will get a lesser portion than the daughters. They will get both in the joint family property as well as in the father's property.

Shri Altekar said that we are going to spend on the marriage of the daughter. Parents will spend both on the marriage of the daughter as well as for providing ornaments and clothes for the daughter-in-law. So, equal expenses will be incurred by the parents, both for the sons and the daughter.

The hon. Law Minister has already referred to the case of married daughters being abandoned by their husbands, or being married into families which are poor or their becoming widows where they might require to be helped more than the unmarried daughters who might be earning themselves and may not be in need of money. There will be several such cases in our society. It is

[Shrimati Jayashri]

not fair that we should make any discrimination between the married and the unmarried daughter.

To say that the daughter should inherit in her father-in-law's family is going against natural love. We expect that she would be more welcome to get a right in her father's property than in what we call a foreign family, because she is going to people who may not accept her as their coparceners. It is, therefore more natural that she should get, whatever inheritance rights she has, in her own parent's family and not in her father-in-law's family. There, she will not inherit it unless she become a widow. So, I would say that a married daughter and an unmarried daughter should be treated alike in the father's family.

When you are going to accept the socialist pattern of society and when you have, in your own Constitution, accepted the individual as the unit and not the family, it is but right that every individual should have his or her succession in the individual capacity and not as the wife or daughter, son's wife or widow or like that.

I would again appeal to hon. Members here that whatever little share they have now accepted according to clause 6, should not be dwindled any further. In our women's organisations we had formally passed resolutions for adopting the Dayabhaga system of law by which they would get equal shares in the father's property. As I said, here, they will be getting only from the father and not from the joint family. I do pray that hon. Members will not create more difference by cutting even from this share and halving the share of the daughter. I also appeal that both married and unmarried daughters should get equal shares and there should be no difference between them.

श्री टंडन (जिला इलाहाबाद–पश्चिम) : श्री उपाध्यक्ष जी, अभी जो दलीलें इस सम्बन्ध में दी गई हैं, उनको सुनकर, और पहले भी जो कुछ बातें कही गई, उनका ध्यान कर मैंने उचित समझा कि मैं अपना मत निवेदन कर दूं । आज मैं इसलिये भी खड़ा हो गया हूं कि सम्भव है कि जिस दिन शेड्यूल (अनुसूची) पर विचार हो, उस दिन मैं इस भवन में न रह सकूं । इस कारण से मैं अभी अपना मत प्रकट कर देना चाहता हूं ।

हमारे इधर एक भाई ने इस बात पर आपत्ति उठाई की माता और पिता की चर्चा शेड्यूल की पहली श्रेणी के उत्तराधिकारियों में नहीं आनी चाहिये । मैं उन लोगों से सहमत हूं जिनका मत है कि माता और पिता को इसमें रखा जाय । मैं इसके पक्ष में हूं । जो प्रवर समिति बनी थी, उसने माता का भाग रखा भी था, परन्तु राज्य सभा में वह हटा दिया गया । मैं तो इसका कोई कारण नहीं देखता । अब आप कर्तव्य की चर्चा करते हैं, तो क्या पुत्र का कर्तव्य माता-पिता की और अपने लड़के की अपेक्षा कम है ? अवश्य, लड़के के प्रति पिता का कर्तव्य है ही, परन्तु हमारे समाज में कभी कभी यह होता है—कम होता है, बहुत नहीं होता है—कि बूढ़े माता-पिता रह जाते हैं । तो मेरा तो यह निवेदन है कि माता को भी रखना चाहिये और पिता को भी रखना चाहिये । प्रवर समिति के निर्णय में माता को रखा गया था और पिता को छोड़ दिया गया था । हमारे यहां प्राचीन वाक्य है–मातृदेवो भव और उसके बाद आता है–पितृदेवो भव । यह तैत्तिरीय उपनिषद् का वाक्य है । स्मृति में माता को पहला स्थान दिया गया है । माता को देवता के समान माना गया है । कहा गया है कि देवता के समान माता का पूजन करो । माता का ऊंचा स्थान माना गया है पिता की अपेक्षा । यह स्पष्ट है । माता का रखना ठीक ही था, परन्तु पिता को भी इस श्रेणी में स्थान मिले, ऐसा मेरा कहना है ।

मैं इस प्रस्ताव से भी सहमत हूं, जो अभी मेरे भाई ने रखा कि इसमें जहां लड़की की चर्चा है, वहां "अविवाहिता" शब्द जोड़ दिया जाय– "अनमैरिड" शब्द जोड़ दिया जाय । मैं इसको बिल्कुल उचित समझता हूं । यह मैं पहले भी निवेदन कर चुका हूं । इधर से हमारे एक भाई ने कहा कि यदि विवाहिता लड़की को आप अपने कुटुम्ब में से देते हैं, तो यह भी तो सम्भव है कि जो बहू आपके घर में आवे वह दूसरे कुटुम्ब से ले आवे । यह दलील दी गयी कि आर्थिक दृष्टि से कुटुम्ब में बराबरी हो जायेगी । यह क्या दलील है ? मेरे सामने पैसा आने जाने का प्रश्न नहीं है । लड़की को आदमी प्रेम से पैसा देगा । यहां पैसे का प्रश्न नहीं है, प्रश्न है कुटुम्ब के विच्छेदन का । यह कौन सी दलील है कि अगर हमारे कुटुम्ब का पैसा जायगा तो दूसरे कुटुम्ब का पैसा हमारे यहां आ जायगा । बात यह है कि जहां से यह पैसा आयगा वहां विघटन होगा और हमारे कुटुम्ब से जाने में भी

विघटन होगा । लड़की तो प्रेम की वस्तु है, विवाहिता हो या अविवाहिता । मैं तो एक क्रम की बात कर रहा हूं । विवाहिता पुत्री जब दूसरे के घर में जाती है, तब यह एक स्पष्ट सत्य है, वह अपने पति के साथ अकेले रहे एसी बात नहीं होती । कुछ आधुनिक क्रम की लड़कियां ऐसी हैं जिनके विषय में यह पुराना क्रम लागू नहीं होता नहीं तो साधारणतया इस देश में जो लड़की विवाहित हो कर जाती है वह पति के कुटुम्ब का अंग होती है और वहां बहुत वर्षों तक, जब तक उसकी उम्र बहुत नहीं हो जाती, उसे बहुत दबाव में रहना पड़ता है, पति के दबाव में, सास ससुर के दबाव में । अगर ऐसी लड़की को पिता की सम्पत्ति में अधिकार होगा तो उसके कारण पिता के कुटुम्ब में विच्छेद होगा । इससे दूसरे कुटुम्ब को अवसर मिलता है कि वह लड़की के पिता के कुटुम्ब में आ कर हस्तक्षेप करे । यह उस प्रश्न का व्यावहारिक पहलू है । यहां कई दफा यह दलील दुहरायी गयी है कि ऐसा करने से देहातों में भूमिखंडों के बटवारे में कठिनाई पड़ेगी, घरों में कठिनाई पड़ेगी, अगर लड़की के पिता और भाई व्यापार कर रहे हैं तो उसमें कठिनाई पड़ेगी । उस व्यापार में लड़की के घरवाले लड़की के नाम पर आ कर हस्तक्षेप करेंगे, हिस्सा मांगेंगे । यह केवल पैसे के आने जाने का प्रश्न नहीं है । प्रश्न यह है कि जिस कुटुम्ब से पैसा जायगा वहां विच्छेद होगा । यह कोई उचित बात नहीं है कि हमारी बहू भी दूसरे घर से पैसा ले आवेगी । प्रश्न यह है कि इस क्रम के कारण कुटुम्बों में वैमनस्य उत्पन्न होगा । यह क्रम विच्छिन्न करता है । इसलिये यह कहा जाता है कि विवाहिता लड़की को अधिकार न दीजिये। अविवाहिता को अधिकार दिया जाय, इसलिये कि जो कुछ उसको मिलेगा उसके द्वारा उसका विवाह किया जा सकेगा और भरणपोषण होगा । अगर ऐसी जायदाद हो जो कि रुपये पैसे के रूप में हो या साथ जा सके तो उसको लड़की ले जा सकती है । लेकिन जो जायदाद खिसकाई नहीं जा सकती, उसके बटवारे को मैं उचित नहीं मानता ।

कुछ अजीब तरह की बातें कही गयीं । इधर से दो एक बहिनों ने कहा कि जो अधिक उम्र के लोग भाषण देते हैं उनका दृष्टिकोण समाज सुधार का नहीं है, वे समाज सुधार के विरोधी से हैं । मुझको तो यह सुनकर आश्चर्य हुआ। मैंने कुछ कनॉट प्लेस की तितलियों की चर्चा की थी । हमारे भाई मोरे ने इसका यह अर्थ निकाला मानो मैं शिक्षित स्त्रियों का अनादर कर रहा हूं । मुझे लगा कि क्या बुद्धि की बात है कि जिनकी उम्र बीती इस बात में कि देश आगे बढ़े, समाज आगे बढ़े, स्त्री शिक्षा आगे बढ़े, उनके विषय में यह कहा जाये । मेरी उम्र का कुछ अंश बीता है इस बात में कि मैं उन लोगों का विरोध करूं कि जो स्त्री शिक्षा के विरोधी रहे हैं । बहुत बार मुझ को ऐसे लोगों से लड़ना पड़ा है । एक कालिज के बनाने में जो कि केवल लड़कियों के लिये है, मेरा हाथ रहा है और इस समय मैं उसका अध्यक्ष हूं । जब मैं जवान था उस समय से मैंने उस संस्था के बनाने में हाथ दिया था । शिक्षित बहिनों का तो मैं आदर स्वभावतः करता हूं । मेरी कई पुत्र बधुएं साधारण नहीं ऊंचे दर्जे की शिक्षिता हैं । परन्तु जो मैंने "तितलियों" का शब्द इस्तैमाल किया तो मेरा तात्पर्य उन स्त्रियों से था जो कि जीवन पर गम्भीरता से विचार नहीं करतीं, जिनके जीवन में भोग विलास मुख्य स्थान रखता है और जो अपने शृंगार को अधिक महत्व देती हैं । मेरा अनुभव है कि जो ऊंचे दर्जे की शिक्षित स्त्रियां हैं वे प्रायः इस तरह की हलकी बातों में नहीं पड़तीं । उनका राजनीतिक विचार चाहे कोई भी हो । चाहे वे समाजवादी हों, चाहे कम्युनिस्ट हों, पर वे हलकी बातों में नहीं पड़तीं । हमारी जो हलकी तरह की स्त्रियां हैं मेरा तात्पर्य उनसे था । मेरा आक्षेप शिक्षिता बहनों पर तो हो ही नहीं सकता ।

मैं यह निवेदन कर रहा था कि अभी कुछ लोगों ने इस तरह की बातें कहीं कि जो लोग उनसे भिन्न मत रखते हैं वे मानों समाज सुधार के विरोधी हैं । यह नितान्त अशुद्ध धारणा है । मैं कुछ समय पहले कन्नड़ देश में गया था तो वहां मैंने अपने कुछ भाइयों से एक कहावत सुनी थी जो मुझे बहुत अच्छी लगी । वह कहावत कन्नड़ भाषा में इस प्रकार है :

आरु हड़े दवरु मुन्दे वन्दु हड़ेदबलु हेलिदलु

इसका भावार्थ यह है कि वह स्त्री जिसके कि अभी एक बच्चा हुआ है उस स्त्री को प्रसव की पीड़ा के बारे में व्याख्यान दे रही है जिसके ६ बच्चे हो चुके हैं । आज ६ बच्चे वाली स्त्री को एक बच्चा पैदा करने वाली स्त्री व्याख्यान देती है प्रसव पीड़ा पर । जिन लोगों की उम्र बीती देश को आगे करने में, आज उनको हमारे वे लोग व्याख्यान देने आये हैं जिन्होंने इस दिशा में कुछ थोड़ा बहुत काम किया है और जो उस सीढ़ी पर अभी चढ़े ही हैं । ये दलीलें छोटी दलीलें हैं । इसका यह अर्थ नहीं है कि जो पुराने लोग हैं

[श्री टंडन]

या जिन्होंने देश के लिये काम किया है जो वह कहें उसको आप मान लीजिये । मैं तो कहता हूं कि जो कुछ वह कहते हैं उस पर आप विचार कीजिये । मैंने यह बार बार कहा है कि मैं पुराने शास्त्रों के ऊपर अपनी बात नहीं कह रहा हूं । हमारी बहन श्रीमती रेणु चक्रवर्ती नें उस दिन कहा कि मैं मिताक्षरा में धर्म का बहुत विशेष गुण देखता हूं । वे कुछ भूल गयीं । मेरा भाषण तो उनके सामने है । जहां तक मुझे याद है मैंने मिताक्षरा की चर्चा भी नहीं की थी । मिताक्षरा, दायभाग या दक्षिणी क्रम इनसे मुझे प्रयोजन नहीं । मेरे सामने प्रश्न दायभाग और मिताक्षरा का नहीं था । मेरा तो कहना है कि ऐसा न कीजिये जिसमें की कुटुम्ब में विच्छेद हो, झगड़ा हो । मैं तो समाज में झगड़े को बचाना चाहता हूं । मेरे विचार में लड़कियों को इस प्रकार पिता की सम्पत्ति में अधिकार देना स्त्रियों का आदर करने का रास्ता नहीं है । मैं इसका पक्षपाती हूं कि आप चाहे अकेली विधवा पत्नी को सम्पत्ति पर अधिकार दीजिए लड़कों को चाहे हटा दीजिये । हम उसको स्वीकार करेंगे कि विधवा को आप आधा दीजिये और आधे में आप संतान को रखिये । माता पिता को कम कीजिये, यह मुझे स्वीकार है । मैं माता पिता दोनों को रखने के पक्ष में हूं, अगर आप अकेले माता को ही रक्खें तब भी मैं उसे अच्छा समझूंगा । इसमें कोई स्त्री और पुरुष की होड़ नहीं है, प्रश्न यह है कि समाज का क्रम कैसे बंधे । प्रस्तावित क्रम के द्वारा आप एक नई बात यह करने जा रहे हैं कि एक दूसरे कुटुम्ब को एक चलते हुए कुटुम्ब में हस्तक्षेप करने का अवसर दे रहें हैं । मैं पूछना चाहता हूं कि यह कौन सी बुद्धिमानी की बात आप करने जा रहे हैं ? मुझको तो यह दिखाई पड़ता है कि कुछ थोड़े से आदमियों और स्त्रियों के दिल में एक इतने पुराने जमे हुए समाज की उन्नति के नाम पर उसको नष्ट करने की बात घर कर गई है और ऐसा करते समय उनके दिल में यह भाव रहता है कि इस तरह वह समाज की अधिक दूरदर्शी उन्नति करने वाले हैं परन्तु मुझे तो उसमें कोई युक्ति अथवा बुद्धि की बात दिखलाई नहीं देती । मेरा तो यह दावा है, जैसा कि मैंने पहले भी कहा था, कि अगर आप को साहस हो तो किसी प्रकार से इसके विषय में राय ले लीजिये । इसके लिये हमारे पाटस्कर साहब न मेरे उस सुझाव के बारे में जो मैंने किया था कि आप इसके बारे में बूढ़ी औरतों से सलाह लीजिये, यह दलील दी कि जब सती की प्रथा इस देश में से हटाई गई थी तो उस समय अगर स्त्रियों से पूछा जाता तो वे कभी स्वीकार नहीं करतीं कि सती की प्रथा को हटा दिया जाय । मैं पाटस्कर साहब से पूछना चाहता हूं कि यह आपने कैसे जाना । मैं तो समझता हूं कि स्त्रियों से सती प्रथा की बाबत अगर उस समय पूछा जाता तो वे भी यही कहतीं कि स्त्रियों को पुरुषों के शव के साथ जलना उचित नहीं है । याद रखिये कि जिस समय सती प्रथा बंद की गई थी उस समय और उसके बहुत पहले से ही शव के साथ विधवा स्त्री नहीं जलाई जाती थी । कभी बिरली कोई एक सती हो जाती थीं लेकिन ऐसा तो नहीं था कि सती रास्ते में मारी मारी फिरती थीं । इतिहास आपके सामने है कि जिस समय वह सती का कानून बना उसके १००-२०० वर्ष पहले से साधारणतया स्त्रियां सती प्रथा को पसन्द नहीं करती थीं । मैं पाटसकर जी साहब-से पूछना चाहता हूं कि क्या उनको पता है कि कितनी स्त्रिया कितनी विधवायें अपने पति के शव के साथ जल गईं ? उस समय भी सती प्रथा का साधारण रीति से प्रचलन नहीं था । हां किसी का सती हो जाना असम्भव नहीं था और कभी कभी कोई विशेष भावना यक्त देवी सती हो जाती थीं । अभी भी नगरों में और बड़े बड़े शहरों में सती के चौरे प्रसिद्ध हैं । अब भी कई वर्षों में सती का कोई दृश्य सामने आ जाता है उसको कानून से बंद कर दिया तो आपने कहा कि हमने एक बड़ी भारी कुप्रथा जो समाज के अन्दर विद्यमान थी, उसको मिटा दिया लेकिन जैसा कि मैंने अभी बतलाया वह बुराई बहुत कुछ पहले ही बन्द हो चुकी थी । साधारण रीति से लोग अपने यहां की स्त्रियों को जलाने के विरुद्ध थे और इसको पसन्द नहीं करते थे और न स्त्रियां ही पसन्द करती थीं । कभी कोई स्त्री अपवाद हो जाया करती थी जो कि धर्म और प्रेम के उन्मादवश पति के शव के साथ लेकर सती हो जाती थी । मुझे तो श्री पाटस्कर जी के मुख से सुनकर बड़ा आश्चर्य हुआ कि यदि स्त्रियों के ऊपर इस सवाल को छोड़ दिया जाता तो वे सती प्रथा के बंद किये जाने का विरोध करतीं । मेरा कहना यह है कि आपका ऐसी कल्पना करना बिल्कुल अशुद्ध है । मैं ऐसा मानता हूं कि हमारे यहां की स्त्रियों को बुद्धि है और वे साधारण रीति से ठीक काम करती हैं ।

आप अगर स्त्रियों के सामने पर्दे का सवाल रखिये तो वे कहेंगी कि स्त्रियों के लिये पर्दा हटना चाहिये । आज कुछ स्त्रियों में पर्दे की

प्रथा विद्यमान है लेकिन मैं समझता हू कि बड़ी संख्या आपको ऐसी स्त्रियों की मिलेगी जो यह कहेंगी कि पर्दा नहीं रखना चाहिये । आप ऐसा क्यों मान लेते हैं । कि स्त्रियां बुद्धि के विरुद्ध बात कहेंगी । यहां तक मूढ़ाग्रह अथवा अन्ध प्रचलन की बात है तो वह अकेले हमारे देश में ही नहीं बल्कि संसार के अन्य देशों में और पश्चिमी देशों में भी मिलता है । लोग नाना प्रकार के मूढ़ाग्रहों से बंधे हुए हैं, बहुत से ऐसे बुद्धिरहित क्रम हैं जिनके अंदर वे जकड़े हुए हैं । मढ़ाग्रह को अंग्रेजी में सुपरस्टिशन कहते हैं । वह पश्चिमी देशों में भी है । कुछ ऐसे चलन और क्रम होते हैं जो आज की परिस्थितियों में व्यर्थ हैं लेकिन वे चले आते हैं । हमारे पाटस्कर जी को शायद मालूम होगा कि ब्रिटिश हाउस आफ कामन्स में आज भी यह प्रथा है कि जब नयी लोक सभा इकट्ठी होती है तब स्पीकर पहले पहल नियुक्त होकर भवन के नीचे के भाग में जाता है उसके साथ लालटैन जाती है जो कि आज बिलकुल आवश्यक नहीं है । यह उस समय की चाल है और उस समय का रास्ता है जब गार्ड फौक्स ने **गन पाउडर प्लौट से हाउस आफ कामन्स** को उड़ा देने का प्रयत्न किया था और वह पकड़ा गया था । उसके बाद यह होने लगा कि हाउस आफ कामन्स की बैठक होने पर स्पीकर स्वयं नीचे जा कर देखता था और चूंकि उस समय (सैलर्स) नीचे के भाग में अंधेरा रहता था इसलिये साथ में उसके लालटैन चलती थी जो अब आवश्यक नहीं है, परन्तु उस पुराने क्रम को वह आज तक निबाहते चले जा रहे हैं । इसी तरह हम देखते हैं कि आज के दिन भी स्पीकर के सामने वह मेस (गदा) रक्खा जाता है, जो पुराने समय का अवशेष चला आ रहा है और संसार में अन्यत्र भी हम देखते हैं कुछ पुराने रास्तों पर लोग जकड़े रहते हैं और उन पर चलते रहते हैं । वही बात हिन्दुओं में भी पाई जाती है परन्तु यदि कहीं उनके सामने एक बौद्धिक प्रश्न आयेगा तो आप ऐसा क्यों समझते हैं कि सारी स्त्रियां और पुरुष गलत रास्ते पर चलने के लिये अपनी राय देंगे ? इस तरह की दलील दे कर आप यह स्वीकार करते हैं कि आप जो काम कर रहे हैं वह जन मत के विरुद्ध है परन्तु चूंकि आप उस रास्ते को ठीक समझते हैं इसलिये आप उनको सुधारने की बात कर रहे हैं । प्रजातंत्र में यह रास्ता सुधारने का होता भी नहीं है, आप उनसे सलाह लीजिये और अगर आपका यह विश्वास है कि स्त्री और पुरुष सब आपकी यह बात मानेंगे कि लड़की को अधिकार दिया जाय तो उनकी राय लेने के बाद आप ईमानदारी से इसको ला सकते हैं लेकिन आपको तो इसमें संदेह है कि स्त्री और पुरुष अगर आप उनके सामने इस बात को ले कर जायेंगे तो वह इस को नहीं मानेंगे । ऐसी अवस्था में इस तरह का कानून बना कर प्रजातंत्र के सिद्धान्त के प्रतिकूल आप अन्याय कर रहे हैं ।

मुझे और अधिक विशेष नहीं कहना है । इस विषय में मेरी वाणी में जितना बल है उसके द्वारा मैं आपसे यह कहना चाहता हूं कि लड़की को हिस्सा न दे कर स्त्री को हिस्सा दीजिये, माता को हिस्सा दीजिये । लड़की को उस सम्पत्ति में हिस्सा दिलवा करके आप विघटन कर रहे हैं और ऐसा करके आप देश में एक अशुद्ध मार्ग स्थापित कर रहे हैं । यह कोई उन्नति का मार्ग नहीं है । आपका जो रास्ता है वह आगे बढ़ने का नहीं है, यह समाज के विघटन करने का रास्ता है । मैं आपसे यह कहना चाहता हूं कि इस विषय पर पूर्ण स्वतन्त्रता से विचार करने की आवश्यकता है । मैं अपनी बहनों और भाइयों से यह कहना चाहता हूं कि वह इस विषय में किसी के पिछलग्गू हो कर न दौड़ें ।

स्वतन्त्र विचार कीजिये । स्त्री के मान अपमान का प्रश्न सामने अवश्य रखिये । जहां तक स्त्री के मान अपमान का प्रश्न है, उसके मान को हमें ऊंचा उठाना है, परन्तु समाज को भी ठीक रखना है । समाज को स्थायी रूप देना है । इस प्रकार से इस प्रश्न को देखिये । इस में केवल हिस्सा देने का ही सवाल नहीं आता है अन्य प्रश्न आते हैं । मुख्य प्रश्न आता है एक कुटुम्ब के दूसरे कुटुम्ब में हस्तक्षेप करने का : इस दृष्टि से जो अभी कहा गया कि पुत्री शब्द, के पहले इसमें 'अविवाहित' शब्द रख दिया जाय, उसका मैं समर्थन करता हूं ।

3 P.M.

Shri Seshagiri Rao: Mr. Deputy-Speaker, I entirely disagree with the amendment moved by Shri Altekar and partly disagree with the amendment moved by Shri Rane. Shri Altekar's amendment seeks to reduce the number of daughters who should inherit the property, while Shri Rane's amendment seeks to reduce the share that a daughter can inherit. If there is a distinction

[Shri Seshagiri Rao]

or discrimination between a married daughter and an unmarried daughter, supposing by the time the father dies all the daughters are married, does it mean that the daughters will not get anything? Does it mean that they cannot expect anything from their father's property? Is marriage a disqualification for women to get a share in their father's property? I cannot understand this at all.

Then there is another thing. Shri Altekar equates marriage with economic stability. He thinks that because a daughter is married she will be rich. There are so many cases where daughters remain poor even after their marriage.

Mr. Deputy-Speaker: Order, order. The hon. Member may resume his seat. Those hon. Members who carry on private conversation should at least have this consciousness that this is not an act permissible. If that consciousness is there, perhaps they might do it in a lower or subdued tone.

Now the hon. Member may continue his speech.

Shri Seshagiri Rao: Sir, this is the gravest injustice that can be done, as I was saying, to the daughter.

There are two outlets to the property of a Hindu family: one by a daughter and the second by a widow. The daughter takes the property away and the widow also may take the property away, because she gets an absolute interest. But one thing which you must consider is that a daughter will remain a daughter for ever, whereas a widow might change her character and become the wife of some other man.

Shri K. K. Basu (Diamond Harbour): But still she is the widow of so and so.

Shri Seshagiri Rao: Yes, 'ex-widow'.

[MR. SPEAKER *in the Chair*]

Therefore, if at all a reduction in the share is to be considered, it should not be in the case of a daughter, but only in the case of a widow. I am in full agreement that we should give a full share to the daughter equal to that of a son. With the redrafting of clause 6, in Mitakshara families a daughter will be getting absolutely nothing. Therefore, I request the hon. Members to see that no reduction is made in the daughter's share. If the idea is that there should not be any reduction in the family property, that there should be less outlets to the family property, it may be considered as to whether the share of the widow can be reduced, so that her share may not go away from one house to the other. In any case, in the case of daughters it is but proper and just that we should give them the full share.

Shri C. C. Shah: Mr. Speaker, I will be very brief and will confine my observations only to the clause under consideration.

As regards the daughter's share, I entirely agree with Shrimati Renu Chakravartty that if we had agreed to the Rau Committee's proposals, namely, to put an end to the Mitakshara joint family and kept half share for the daughters, they would have benefited more than under the present proposal. But, having agreed to the amendment to clause 6, which we did yesterday, I consider it impossible to support any proposition which would reduce the share of a daughter from what is provided for now in the Bill. I agree that the system of joint family will not survive long and the consequences will be that when that system comes to an end, what is now provided for, namely, a share equal to that of the son, will remain. Though at present the daughters may seem to suffer a little, I think ultimately they will gain. But in any event, I have no doubt that what we have now provided for must remain and we cannot change.

As regards father and mother, I am afraid there is some misconception. The first charge upon the estate of a deceased are his lenial descendants and widow . That is so in all systems of jurisprudence.

Pandit Thakur Das Bhargava: What about Muslims?

Shri C. C. Shah: I will come to that. If the person concerned desires to provide for father and mother and if he finds that they are otherwise not provided for, it is open to him to make a testamentary disposition making provision for father and mother.

Shri Barman (North Bengal—Reserved—Sch. Castes): That is done in all cases.

Shri C. C. Shah: So far as the father is concerned, it is generally presumed that the father has his own property.

The sons and the children ordinarily do not have their own property apart from the property of the deceased. Therefore, out of the property of the deceased, provision must first be made for the widow and the children of the deceased, and the father and the mother come thereafter. That is the present Hindu law, which has been there for ages and centuries. I do not understand what injustice has been done to father and mother for all these centuries and ages, that we want to suddenly provide for the father and mother along with sons and daughters.

There is another thing. So far as the mother is concerned, somebody made an observation that she was included in class I first, but the amendment made by Rajya Sabha has taken her out—and very rightly so in my opinion. If you include mother in class I, what will be the consequence. The mother will inherit as widow of her husband, the mother will inherit as daughter to her father and the mother will inherit to the son. In triple capacity she will inherit. She will inherit to every son; if she is lucky enough to have more than one son, she will inherit to more than one son. That will create an imbalance in any society.

Shri Tandon : If all the the sons die during her life-time.

Shri C. C. Shah : Ordinarily a mother expects that the sons will survive her.

Shri Tandon : Certainly.

Shri C. C. Shah : Therefore, I was submitting, that the mother is amply provided for both as a successor to her husband as well as a daughter to her father. That is why no provision is ordinarily made for the mother to succeed to the son.

Of course, it is a quite different proposition as to who should be in class I, because there are several heirs in class I who, in my opinion, should not be in class I and should not be preferred to the father and mother. But I may make it quite clear that so far as the children of the deceased are concerned, and so far as the widow of the deceased are concerned, they must have preference over the father and mother and they should not be made to take along with the father and mother. Whether those in the second generation and third generation should be preferred to the father and mother or not, is a question about which there can be a difference of opinion. For example, daughter's daughter, son's daughter, daughters of a predeceased son of a predeceased son and so on, who have been put in class I of the Schedule, presumably cannot be and ought not to be in class I, but should come after the father and mother as they are at present. That matter can, of course, be discussed when we take up the Schedule. However, I once again say that I do not agree that the father and mother can be placed along with the sons and daughters.

Now, as regards the unmarried daughter and married daughter there is a distinction sought to be made. There are two propositions made. One is that the unmarried daughter should succeed to the father, but the married daughter should not succeed at all. The other proposition is that the unmarried daughter should have a share equal to that of the son but the married daughter should have only half of the son's share. I am afraid we cannot agree to either of these propositions and the reason is obvious. A daughter who may be unmarried may marry immediately after the death of the father. A daughter may marry before or after the death of the father. That makes no difference. If a son has married during the life-time of the father and another son has not married, we have not provided that when they go to partition all the expenses incurred in connection with the marriage, education in foreign countries etc., will be deducted from the share of the son concerned before the actual partition takes place.

Pandit Thakur Das Bhargava : At the time of partition, all these considerations prevail. Partition is done according to the circumstances in each case. That is the Hindu law.

Shri C. C. Shah : That is not Hindu Law. When you go to partition, you divide the property as it stands at the time of the partition. I have never known a Hindu law which says that what has been spent for marriage, education etc., on one son should be deducted from his share before the partition of the property. If that is said to be the proposition of Hindu Law, I beg to differ. But the whole point at dispute, as I said yesterday, is the objection to the daughter taking a share at all, because she goes into the other family.

[Shri C. C. Shah]

I entirely appreciate that sentiment. I have listened very respectfully to the speech of Shri Tandon now and also previously. That is a sentiment which he strongly holds, namely, because the daughter goes into the other family she should have no share at all. It is a difference of opinion on which unfortunately this Bill now cannot compromise. Pandit Thakur Das Bhargava's theory is that the son and the wife should succeed simultaneously to the property of the father-in-law, and that means we will have to re-write the whole of this Bill. It is of course quite a different proposition. Daughters have been made the sharers in all systems of law. No ruin has come to society because of that reason. We will adjust things. Of course, it is a novel idea. It is very difficult for us to adjust our minds to the great change which is coming upon us.

The proposition was made that a widow on remarrying should forfeit all the interest which she has received. It is very difficult for some of us to make a mental adjustment when it comes to the property of the female being made absolute. If she remarries she is entitled to take the property with her as well! But that mental adjustmnet of feeling that the daughter or the widow takes the property absolutely is undoubtedly difficulty. But I submit that it is a fundamental change which this Bill makes and we should support it as it stands.

Shri Barman: I am not only surprised but I am amazed to hear certain arguments of Shri C. C. Shah today. He stated that for centuries and centuries, the law has been that the mother does not come in as an heir.

Shri C. C. Shah: As a preferencial heir along with the sons.

Shri Barman: In the case of Dayabhaga it is the son, son's son, son's grandson who take the share. It is up to the third generation, and it is the male descendants of the father who take first. In their absence, it is the mother and the father that come in. So, that is the proposition. He says that it is applicable only to Mitakshara and not to Dayabhaga. We understand the difference between the two.

Shri C. C. Shah then stated that he objects not only to the mother but also to some other female heirs that are now classified in class I. If that be so, I should like the House to understand the position of the female heirs in a Mitakshara family. It is only in the case of class I heirs that we have provided in clause 6 that female heirs should come in. If they do not come under class I, even in a coparcenary property, no other female heirs classified in other classes which may be class II or anything else, come in at all.

Shri C. C. Shah: That will come in.

Shri Barman: That is the proposition now made. In clause 6 you have stated that the female heirs will come in only in respect of those who are mentioned in class I. That has been definitely stated. If these female heirs have been eliminated from class I, certainly we deprive the female heirs practically of all the property.

Shri C. C. Shah: Not all. I said that only some of it will go.

Shri Barman: Shri C. C. Shah wants to eliminate them from class I and that will certainly deprive the heirs from inheriting anything in the Mitakshara coparcenary property. That is a proposition which we shall have to consider afresh.

Shri C. C. Shah stated one objection, namely, in case we bring the mother in class I, then the mother will inherit in a variety of capacities, as a wife, as a mother and also from many other sources. Supposing in a particular case it so happens. What is the harm? After all, it is the property of the husband, of the son, etc., and if some sons were living, certainly it will again descend to the other sons in the line, and the mother gets a bit more share than the other female heirs. I do not think, as a Hindu, I should grudge that, because after all the mother is the most affectionate of all female heirs whatever the other female heirs might be. So, I entirely disagree with the proposition and the arguments that have been advanced by Shri C. C. Shah today when he objects to the mother being transferred to class I which was recommended by the Joint Committee but which was changed and the mother was relegated to class II by the Rajya Sabha. I think that we cannot reconcile ourselves with the aspect that the mother should be left in a position much worse than other female heirs to whatever class they might belong. I entirely disagree with Shri C. C. Shah, and I again ask this House to consider this matter and to bring at least the mother and the father in class I.

Shrimati Sushama Sen: I have an amendment saying that father and mother should be placed in class I. I think in the original Bill the mother was placed in class I, but somehow or other, the Rajya Sabha had put her under class II. I think in all fairness the mother should be placed in class I. That is my amendment. I wish that along with the mother, the father also should be put in class I but perhaps it is not possible. But there should not be any discrimination. However, I want that the mother should be placed in class I. I hope the Minister would kindly accept this amendment.

Shri Pataskar: I am rather in a position where I do not know where I really stand in relation to the discussion on clause 10 and the Schedule. Many of the matters on which we agreed should rather be discussed and settled at a time when we come to discuss the Schedule. But having discussed them now, perhaps it will curtail the time allotted for the Schedule. Of course that time could be utilised for other matters if the Members so choose.

So far as clause 10 is concerned, what does it really relate to? What is it to which the Members object? "The property of an intestate shall be divided among the heirs in class I in accordance with the following rules." Rule 1 says:

> "The intestate's widow, or if there are more widows than one, all the widows together, shall take one share".

Fortunately, if the Hindu Marriage Act had been passed a few years earlier, there would probably no question of more than one widow. But, unfortunately, at the present moment—

Mr. Speaker: Nobody has ever said about it.

Shri Pataskar: Yes. I pass to rule 2 which says:

> "The surviving sons and daughters of the intestate shall each take one share".

That is really the most important part of the clause on which there can be some discussion. The daughter and the son shall each take an equal share. I never expected that, when I put forth the amended clause 6, and looking to the general discussion and the trend in which it went on and the support which it received, there would be a further attempt made in this House to reduce the daughter's share. I will not go into the question again, but having committed ourselves to the principle at least which underlies clause 6, these rules in clause 10 have been made. There was one provision in the Joint Committee. Then the Bill went to the Rajya Sabha. We thought that there should be something done in which, if at all the Mitakshara sons are there, they should not be interfered with. We started with the idea which is acceptable to all people, apart from one's opinion or otherwise, the idea being that we do not want to do away with Mitakshara here and now by this Act. That is what we agreed to, by the clause which we had adopted yesterday. If at all the Mitakshara system is allowed to live, then the sons and daughters will have their shares; we should not touch it. I thought that the principle was acceptable to the House and it was in that hope I brought forward that amendment to clause 6. But again today I find hon. Members demanding that the share of the daughter should be reduced to half. I thought the whole matter was discussed yesterday and there was an end of it. There has to be some consistency in the way in which are proceeding with this Bill. I think this is not the right approach. So far as this Bill is concerned, we take something as the basis of the legislation that we pass. Having decided the basis, I do not know what reply I should give to general questions like, "What is the position of the unmarried daughter?" and so on. How many times have these things been discussed in this House?

In clause 32 the word "testamentary" has been used, because I thought that it should be left to the father. The clause even goes to the length of saying that in spite of what has been provided in clause 6, the father can see that the daughter may not got any share at all. Having done all that, when we come to clause 10, the same issue is raised and hon. Members want that the daughter's share should be reduced to half. I do not know what will be said again on this matter at the time of the discussion of the Schedule. I will only say this. After having passed clause 6, I am pained—not only surprised—to find that there is a proposal from somebody to further reduce the daughter's share to half. The only thing I want to say is that they should not have tried to change the tone of the whole thing which we did yesterday.

[Shri Pataskar]

Nothing has been said about Rules 3 and 4 and therefore, I am not referring to them. The only germane issue to far as this clause is concerned is, what should be the share of the daughter. I leave it to the goodwill and to the honour of all the hon. Members of this House to decide whether it is desirable that we should take up the question again and say that the daughter shall get only half, instead of what has been provided for her already.

Shri Rane: In response to the appeal made by the hon Minister, I do not press my amendments and beg leave to withdraw them.

The amendments were withdrawn.

Mr. Speaker: What about the portion of the amendment dealing with the share of the father and mother?

Shri Pataskar: I do not want to rule it out, because mother was there in Class I at one time. We will consider it when we come to the Schedule.

Shri S. S. More: We are not committed to it, because the hon. Member is not pressing his amendments.

Shri H. G. Vaishnav: There is my amendment to clause 10.

Mr. Speaker: I think it is not moved. Therefore, the question of the share of the father and mother will stand over. There is Mr. Deshpande's amendment that the daughter shall be given one-fourth share and Mr. Altekar's amendment providing for half share.

Shri Altekar: I have not said that the share should be half. My amendments are with respect to the daughter's son and daughter's daughter. They can be discussed at the time of the consideration of the Schedule. They do not come here.

Mr. Speaker: There is his amendment No. 107.

Shri Altekar: It is not my amendment.

Mr. Speaker: It stands in the names of Shri G. S. Altekar and Shri M. D. Joshi; so, it is supported by another Member. It reads,

> Page 6, line 10, *for* "daughters" *substitute* "unmarried daughters".

In his enthusiasm, the hon. Member may say anything now; but to say that he had not tabled it is wrong.

Shri Altekar: I would like to withdraw my amendment.

The amendment was, by leave, withdrawn

Shri V. G. Deshpande: I would also like to withdraw my amendment. The question about the married daughter can be considered when we come to the Schedule.

The amendment was, by leave withdrawn

Mr. Speaker: The question about the share of the daughter must be settled now. When we come to the Schedule, the question about the share of the father and mother can be taken up there. We have had sufficient discussion on the share to be given to the daughter; I will now put it to the vote of the House. So far as the share of the daughter is concerned, it should be settled here and now. All the hon. Members have withdrawn their amendments. Is there any other hon. Member who wants still that the share should be reduced to half and so on?

The amendments were, by leave with drawn

Shri S. S. More: Shri Deshpande has withdrawn his amendment subject to the condition that it should be considered in the Schedule.

Shri Tandon: Is it your ruling that by withdrawing their amendments seeking to add the word "married" before the word "daughter", the proposers of those amendments will lose their right of proposing the same amendments at the time the Schedule is considered? I want you to make that point clear, because it seems to me that that amendment is being withdrawn here on the supposition that it will be discussed when the Schedule is considered.

Pandit Thakur Das Bhargava: Yes.

Mr. Speaker: Having spent so much time, I am not going to allow this kind of indulgence to bring the matter again at the time when the Schedule is considered, so far as the daughter's share is concerned. Let us understand what exactly the position is. Under Rule 2 of clause 10, the surviving sons and daughters of the intestate shall take each one

share. The word "daughter" is unqualified and includes both married and unmarried daughter. If any hon. Member wants to say that it shall be restricted to unmarried daughters, here and now the amendment must be tabled. If the hon. Member Mr. Tandon objects, or for that matter, if even a single hon. Member objects to the withdrawal of the amendment, I will put it to the vote of the House. Let it not be said, "So many hon. Members have withdrawn their amendments; but, the other hon. Members have proceeded on the footing that the amendment is there." Let it not be said that by a side way, this matter was not brought before the House. Let the opinion of the House be taken, after having discussed the matter at such great length. If he says that notwithstanding the fact that so many people have withdrawn there is one opposition, I have no objection to put it to the House. The sponsors of the amendments have withdrawn. If the amendments are withdrawn, married or unmarried daughter gets a full share and not a half or one-fourth share. If any hon. Member wants me to put it to the House, I will have to put it to the vote of the House. I am not going to allow any opportunity to raise this point during the discussion of the Schedule.

Pandit Thakur Das Bhargava: With your permission, may I suggest one thing? We were discussing clause 6. The hon. Minister said, subject to the decision on the Schedule, this decision is accepted. When we are on clause 10, we accept this decision subject to the decision on the Schedule. In regard to the amendment for the substitution of unmarried for the married daughter I have not spoken because that was your ruling.

Mr. Speaker: It was not.

Pandit Thakur Das Bhargava: It was.

Mr. Speaker: Order, order. hon. Members will kindly note that rule 2 is clear and specific; the surviving sons and daughters of the intestate shall each take one share. If any hon. Member wants to qualify the daughter by the word unmarried or married or qualify the share by making it one-half or one-fourth, here is the occasion for doing it. Amendments have been tabled. The question of married or unmarried daughter was also discussed.

Pandit Thakur Das Bhargava: They are tabled to the Schedule.

Mr. Speaker: Hon. Members may table amendments to various portions.

Pandit Thakur Das Bhargava: My humble submission is, suppose we agree that the daughters do not come in at all and daughters are not given a right, we are not debarred by clause 10 or clause 6.

Mr. Speaker: I have already said that, Having passed clause 10, nobody will have the right to dismiss the daughter from the Schedule.

Pandit Thakur Das Bhargava: If that is the ruling now, we should be given an opportunity to place our view in regard to this matter. We have not discussed this question because we thought that all these decisions under clause 10 are subject to the decisions in regard to the Schedule.

Mr. Speaker: No, no.

Pandit Thakur Das Bhargava: In respect of father and mother also, that is the ruling.

Mr. Speaker: Father and mother: that is a different matter. So far as the father and mother are concerned, they are not affected either by clause 9 or clause 10. If the father and mother can be transposed from class II to class I, the language of clause 9 or 10 may stand without any further modification. If the language of clause 10 requires modification, I said here and now I will have amendments tabled, discussed and decisions reached.

Shrimati Renu Chakravartty: Are we to understand that at the time of the discussion of the Schedule, what can be discussed is whether any particular entry can be lowered or taken from class II to class I and that would be more or less the limit of the discussion?

Mr. Speaker: Not that alone. Wherever the expressions son, daughter, are used in the clause here, the daughter's daughter or the daughter's son can be transposed from class II to class I. But, once the House accepts daughter and son, this cannot be raised.

Pandit Thakur Das Bhargava: Kindly see rule 3. We have not discussed the branches.

Mr. Speaker: Rule 3 is that the heirs in the branch of each predeceased son or each predeceased daughter of the intestate shall take between them one

[Mr. Speaker]

share. If hon. Members object to the daughter being there, I have no objection to allow that amendment even here.

Pandit Thakur Das Bhargava: We have given amendments to the effect that all these daughters' and son's daughters' shares should be removed. According to the ruling we will not be able to discuss that also.

Mr. Speaker: If they want to discuss under rule 3, I have no objection.

Pandit Thakur Das Bhargava: Under the Schedule, we will discuss.

Mr. Speaker: Let us understand clearly what is it that we are reserving for consideration at the time of the Schedule. Even they, I would say, must have been discussed under rule 3. Rule 3 is specific.

Pandit Thakur Das Bhargava: This matter has not been discussed.

Mr. Speaker: Rule 3 will be reserved. As regards rule 2, half share etc. ....

Pandit Thakur Das Bhargava: That would mean that those persons who thought that according to your ruling these matters can come up and be discussed would be prejudiced. We did not speak on this question of married and unmarried daughters on the basis of your ruling. That is the ordinary rule. When two things come up and they are the subject of the Schedule, the Schedule is the deciding factor. If the Schedule is carried, it goes to the clause also. That is the ruling.

Mr. Speaker: I never gave any such impression. As a matter of fact, the House has passed clause 6. No assurance was given here that if the Schedule is modified, clause 6 will be modified. How can we modify?

Pandit Thakur Das Bhargava: This question I put to you. I wanted an assurance from the Minister and an assurance was given on the floor of the House. If you will kindly see the proceedings, you will find that it was said that subject to the decision on the Schedule, this shall be voted. You will please see the proceedings.

Shri S. S. More: On the contrary, I rose to a point of order when the Schedule was sought to be discussed, according to the proper procedure, the other relevant clauses ought to be passed and then only we can approach with a proper mind the Schedule. My hon. friend tries to reverse the process. All the clauses are to be left suspended; then we discuss the Schedule and in the light of the Schedule, we discuss them. How is it?

Pandit Thakur Das Bhargava: I am not reversing. I raised the point on the floor of the House for getting an assurance that we will get the decision changed if the Schedule is not passed. It was on that assurance that we proceeded. You may please see the proceedings of the House.

Mr. Speaker: I will now put the share of the daughter.

Shri Altekar: I want one clarification. I have moved amendment No. 133 that sons of a predeceased daughter and, daughter of a predeceased daughter should be removed from the Schedule. I want to know whether that would be affected by this decision here.

Mr. Speaker: I am not prepared to give a hypothetical ruling.

Shri V. G. Deshpande: I want to press my amendment. I would like to press it so far as the unmarried daughter is concerned. Or, we may be given time to give another amendment that in the place of daughter, unmarried daughter may be substituted. My amendment is that an unmarried daughter should get one-fourth share. There may be some Members who would like to have an equal share, but would restrict it to an unmarried daughter. These can be done if I am given an opportunity just now or the next day. I say, only for voting. That can be done. Why do it in a hurry? There was confusion about the Schedule.

Mr. Speaker: So far as Shri V. G. Deshpande is concerned, I said I shall take up only rule 6 of amendment No. 106 where he says surviving unmarried daughter, one-fourth share.

Shri V. G. Deshpande: I want only about unmarried daughter.

Mr. Speaker: Surviving unmarried daughter one-fourth. There is no doubt. Unmarried or married: that is what Pandit Thakur Das Bhargava wants to reserve for the schedule. It is now 3-35. It will stand over till tomorrow or next day. Now, the House will take up Private Members'